

**ILLINOIS STATE POLICE MERIT BOARD
OF THE STATE OF ILLINOIS**

IN RE THE MATTER OF:

**TROOPER JUAN LOPEZ
I.D. # 6194**



**Illinois State Police
Merit Board No. 16-05**

DECISION

THIS CAUSE comes before the Merit Board on a ten-count *Complaint* filed by Leo P. Schmitz, Director of the Illinois State Police, following a full hearing before duly appointed Merit Board Hearing Officer Susan Davis Brunner.

FINDINGS OF FACT

The Merit Board, having reviewed the charges filed, the evidence and testimony submitted, the Briefs of Counsel, the Hearing Officer's *Recommended Findings of Fact and Conclusions of Law*, does hereby adopt and incorporate herein the Hearing Officer's *Recommended Findings of Fact and Conclusions of Law* for Counts I, II, III, IV, V, VI, VII, VIII, IX, and X of the *Complaint*.

The Merit Board finds Trooper Lopez guilty of violating the Department's Rules of Conduct (ROC) as alleged in Count I of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.1 in that he committed the offense of Aggravated Discharge of a Firearm, in violation of 720 ILCS 5/24-1.2(a)(1), a class 1 felony. Trooper Lopez knowingly discharged his firearm into the sliding glass door and window of Special Agent Angelica Aguilar's residence, which he knew to be

occupied, from a place outside that residence. Trooper Lopez did not have legal justification to discharge his firearm in this manner.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count II of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.1 in that he committed the offense of Reckless Discharge of a Firearm, in violation of 720 ILCS 5/24-1.5(a), a class 4 felony. Trooper Lopez discharged his firearm into the sliding glass door and window of Special Agent Aguilar's residence. Trooper Lopez's conduct created a substantial and unjustifiable risk that a person inside the house would be injured as a result of his discharge of his firearm.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count III of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.1 in that he committed the offense Home Invasion/Firearm, in violation of 720 ILCS 5/19-6(a)(3), a class X felony. Trooper Lopez was not acting as a law enforcement officer on April 6, 2014. Trooper Lopez had reason to believe that Special Agent Aguilar was inside her residence, and that another person could be with her. Trooper Lopez threatened the use of imminent force when he entered the residence brandishing his firearm.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count IV of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.1 in that he committed the offense of Home Invasion/Discharge Firearm, in violation of 720 ILCS 5/19-6(a)(4), a class X felony. Trooper Lopez had reason to believe that Special Agent Aguilar was inside her residence, and that

another person could be with her. Trooper Lopez personally discharged his firearm in the course of entering Special Agent Aguilar's residence.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count V of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.1 in that he committed the offense of Reckless Conduct, in violation of 720 ILCS 5/12-5, a class A misdemeanor. Trooper Lopez acted recklessly when he discharged his firearm into the sliding glass door and south window of Special Agent Aguilar's house. Trooper Lopez did not witness any crime occur, and it was not reasonable to believe that a crime had occurred. Trooper Lopez had no justifiable reason to discharge his firearm.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count VI of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.2 in that he was found guilty of Reckless Conduct on June 22, 2016.

The Merit Board finds Trooper Lopez not guilty of violating the ROC as alleged in Count VII of the *Complaint*.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count VIII of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.8 in that he failed to maintain a level of conduct in his personal affairs that is in keeping with the highest standards of law enforcement and caused the Department to be brought in disrepute. Trooper Lopez intentionally and recklessly discharged his firearm into the sliding glass door and window of the residence of his

ex-girlfriend Special Agent Aguilar. Trooper Lopez was not justified in his use of deadly force. Trooper Lopez was criminally charged with and found guilty of Reckless Conduct.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count IX of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.D.1 in that he failed to use his Mobile Data Computer (MDC) in accordance with established Department procedure SRV-208.III.D.1. Trooper Lopez utilized his MDC for reasons other than official ISP business when he accessed LEADS information and ran the registration for the vehicle parked in Special Agent Aguilar's driveway.

The Merit Board finds Trooper Lopez guilty of violating the ROC as alleged in Count X of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Lopez violated ROC-002, Paragraph III.A.7 in that he failed to conduct himself off duty in such a manner as to reflect favorably on the Department, and his conduct discredited the integrity of the Department. Trooper Lopez discharged a firearm into the sliding glass door and window of the residence of his ex-girlfriend. Trooper Lopez was not justified in this use of deadly force. Trooper Lopez was criminally charged with and found guilty of Reckless Conduct. The Merit Board finds Trooper Lopez guilty of additional criminal behavior by a preponderance of the evidence in this matter.

CONSIDERATION OF MITIGATING AND AGGRAVATING FACTORS

In making its determination of the appropriate level of discipline, the Merit Board considered all mitigating and aggravating factors presented by Trooper Lopez and the Department, including, but not limited to, the following:

Ivan Pantoja is a CPD police officer and had been a friend of Trooper Lopez for approximately ten years. Officer Pantoja stated that Lopez was an honest and religious person who had high standards as a person, a friend, and a police officer.

Father Sean O'Sullivan is the pastor of the Church Lopez attended as well as his friend. Father O'Sullivan testified that Lopez is a good, truthful man of good character. He testified that Lopez was very helpful at fundraisers, outreach, and other events, and was very dedicated to his family.

PENALTY

The entirety of the evidence presented shows Trooper Lopez's continued employment as an officer with the Illinois State Police would be detrimental to the discipline and efficiency of the Department, and constitutes cause for termination. It is, therefore, the unanimous decision of the Merit Board to terminate Trooper Juan Lopez from employment with the Illinois State Police.


Dated this 17th day of April, 2018.



Reeve Waud, Chairman
State Police Merit Board, State of Illinois

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STATE OF ILLINOIS
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IN THE MATTER OF:)	
TROOPER JUAN LOPEZ)	NO. 16-5
I.D. #6194)	
)	
)	

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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I. BACKGROUND

PLEADINGS

On December 22, 2016, Leo P. Schmitz, Director of the Illinois State Police, filed a Complaint with the Illinois State Police Merit Board (hereinafter referred to as "ISPMB"). The Complaint contains ten counts of alleged violations against Trooper Juan Lopez (hereinafter referred to as "LOPEZ"). Based upon the Complaint, Director Schmitz (hereinafter referred to as the Director) requested the ISPMB to conduct a hearing in this matter and terminate LOPEZ from his employment with the Illinois State Police (hereinafter referred to as "ISP").

All of the allegations contained in the Complaint are based upon LOPEZ' conduct on April 6, 2014, at the home of his ex-girlfriend ISP Special Agent Angelica Aguilar (hereinafter referred to as "AGUILAR"), while LOPEZ was off duty and dressed in civilian clothes.

The first five counts of the Complaint as follows allege that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1 (hereinafter referred to as Rule 1). Rule 1 states, "Officers uphold the Constitutions of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction".

Count I alleges that LOPEZ violated Rule 1 when he committed the offense of Aggravated Discharge of a Firearm, in violation of 720 ILCS 5/24-1.2 (a)(1), a Class 1 Felony, when he knowingly discharged his firearm into the sliding glass door and south window of AGUILAR's residence, which he knew to be occupied, from a place outside that residence.

Count II alleges that LOPEZ violated Rule 1 when he committed the offense of Reckless Discharge of a Firearm, in violation of 720 ILCS 5/24-1.5 (a), a Class 4 Felony, when he discharged his firearm in a reckless manner into the sliding glass door and south window of AGUILAR's residence, which endangered the bodily safety of an individual.

Count III alleges that LOPEZ violated Rule 1 when he committed the offense of Home Invasion/Firearm, in violation of 720 ILCS 5/19-6(a)(3), a Class X Felony, when he, without authority, knowingly entered AGUILAR's dwelling place, when he knew one or more persons was present, and while armed with a firearm, used force or threatened imminent use of force upon a person within the dwelling place.

Count IV alleges that LOPEZ violated Rule 1 when he committed the offense of Home Invasion/Discharge Firearm, in violation of 720 ILCS 5/19-6(a)(4), a Class X Felony, when he, without authority, knowingly entered AGUILAR's dwelling place, when he knew one or more persons was present, and while armed with a firearm, and used force or threatened the imminent use of force upon a person within the dwelling place, and personally discharged a firearm.

Count V alleges that LOPEZ violated Rule 1 when he committed the offense of Reckless Conduct, in violation of 720 ILCS 5/12-5, a Class A Misdemeanor, in that he

recklessly discharged his firearm into the sliding glass door and window of AGUILAR's residence, endangering the bodily safety of another person.

Count VI alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.2 (hereinafter referred to as Rule 2). Rule 2 states, "If an officer enters a guilty plea, nolo contendere, stipulates to the facts or is found guilty of a violation of any law, or there is any other judicial determination that will support any punitive measure taken against the officer, such action by the officer or judicial entity will be prima facie evidence of a violation of this directive. Count VI alleges that LOPEZ violated this rule when, on June 22, 2016, he was found guilty of Reckless Conduct in Criminal Court.

Count VII alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.41.c (hereinafter referred to as Rule 41). Rule 41 states, "Officers are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer is the subject of the investigation and has been advised of his/her statutory administrative proceedings rights if the allegation indicates that a recommendation for demotion, suspension of more than 15 days or discharge from the Department is probable. Count VII alleges that LOPEZ violated Rule 41 on August 31, 2016, when he failed to truthfully answer questions during the Department personnel investigation of LOPEZ, when he falsely described the condition of the side door to AGUILAR's home prior to his April 6, 2014, entry into the home.

Count VIII alleges that LOPEZ violated ISP Department Directive, Rules of Conduct, Paragraph III.A.8 (hereinafter referred to as Rule 8). Rule 8 states, "Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute. Count VIII alleges that LOPEZ violated Rule 8 when, while he was off duty, he was involved in an incident during which he discharged his firearm into the sliding glass door and window of the residence of his ex-girlfriend AGUILAR. LOPEZ was then criminally charged and found guilty of Reckless Conduct.

Count IX alleges that LOPEZ violated ISP Department Directive, Rules of Conduct, Paragraph III.A.66 (hereinafter referred to as Rule 66). Rule 66 states that, "Officers will use Mobile Data Computer (MDC) systems in accordance with established Department procedures. Count IX alleges that LOPEZ violated Rule 66 when he, while off duty, used his MDC to access LEADS and run the registration of a vehicle parked in the residential driveway of AGUILAR, his former girlfriend, for a purpose other than official ISP business. The Count maintains that this use of his MDC was a violation of ISP Directive SRV-208, Mobile Data Computer Systems, Paragraph III.D.1 (hereinafter referred to as SRV-208). SRV-208 states, "Use of the MDC is restricted to official ISP business. Computer files, web browsing history, all messaging, software installed, and LEADS inquiries, are subject to review without notice to the user. There is no expectation of privacy with respect to use of the MDC."

Count X alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.7 (hereinafter referred to as Rule 7). Rule 7 states, "Officers will conduct themselves on and off duty in such a manner as to reflect favorably on the Department. Officers will not engage in conduct that discredits the integrity of the Department or its employees, or that impairs the operations of the Department. Such actions will constitute conduct unbecoming an officer. Count X alleges that LOPEZ violated Rule 7 when he was involved in an incident during which he discharged a firearm into the sliding glass door and window of AGUILAR's residence, and was questioned by the Chicago Police Department, and was criminally charged and later found guilty of Reckless Conduct.

PRE-HEARING PROCEDURES

The Complaint in this matter was filed on December 22, 2016, after the completion of all criminal prosecutions against LOPEZ before Judge James Linn in Cook County Circuit Court. Attorney Daniel Herbert (hereinafter referred to as Herbert) represented LOPEZ at his criminal trial, and also represents him, along with his co-worker Kelly Krauchun (hereinafter referred to as Krauchun) in this disciplinary matter before the ISPMB. The Director was represented in pre-trial proceedings by Assistant Attorneys General Scott Crouch and William Rock, until September 18, 2017, when Assistant Attorney Generals Jessica Durkin (hereinafter referred to as Durkin) and Derek Kuhn (hereinafter referred to as Kuhn) filed substitution appearances. This matter was originally assigned to Administrative Hearing Officer Peggy Ryan, but on May 4, 2017, but because of logistic

reasons, was reassigned to Administrative Hearing Officer Susan Davis Brunner (hereinafter referred to as Hearing Officer).

Discovery was conducted without incident or objection, and both parties reviewed the exchanged discovery and witness lists and agreed on September 8, 2017, that discovery had been completed. On the same date, this case was set for hearing on November 1 and 2, 2017. On September 25, 2017, the hearing date of November 6, 2017, was added to the schedule, as ISP determined that certain witnesses were unavailable on the other two dates.

THE HEARING

The hearing began on November 1, 2017. On November 6, Krauchun notified the Hearing Officer that it had subpoenaed Sergeant Crane from the Chicago Police Department (hereinafter referred to as CPD) on November 1, to appear at the November 6 hearing. Krauchun stated that Crane had been on furlough and was unable to appear, and Krauchun requested an additional hearing date for his appearance. ISP filed a Motion to Quash the Subpoena, as it did not abide by ISPMB Rule 150.650. The motion stated that the subpoena was not served by the ISPMB, was untimely, and was improperly served by fax. On November 8th, Krauchun agreed to withdraw the Crane subpoena, and, over the objection of the ISP, the matter was set for an additional hearing date of November 13th for the appearance of CPD Detective Raschke, provided his subpoena was properly served and timely filed with the ISPMB. Detective Raschke did not appear at the hearing on November 13, but after the completion of all other

testimony, Herbert stated that rather than pursuing a Rule to Show Cause against Detective Raschke, or other potential actions, LOPEZ rested his case.

At the close of all evidence on November 13, 2017, a briefing schedule was ordered for simultaneous closing arguments to be filed by January 10, 2018. Per ISPMB and administrative rules, the Hearing Officer's Recommended Findings of Fact and Conclusions of Law were to be submitted by February 24, 2018.

C (1) WITNESSES AT THE HEARING

The following witnesses testified at the hearing in this matter. The number below in parentheses after each listed name is the transcript page number where that witness' testimony begins.

November 1, 2017:

1. Trooper Juan Lopez, adverse witness (12);
2. Special Agent Angelica Aguilar (29);
3. Sergeant Lee Marks (133);
4. Special Agent Sherise Gipson (190).

November 2, 2017:

1. Sergeant Cory Morin (205);
2. Colonel Joanne Johnson (224);
3. Ivan Pantoja (286);
4. Sean O'Sullivan (289).

November 6, 2017:

1. Master Sergeant George Jimenez (298);
2. Agreed Stipulation to the testimony of CPD Officer Nancy DeCook, given on June 22, 2106, in Cook County Circuit Court case #15-CR-1184, People of the State of Illinois v. Juan Lopez (308).

November 13, 2017:

1. Trooper Juan Lopez (321);

C (2) EXHIBITS

The following exhibits were admitted into evidence in this matter:

Petitioner's Exhibits:

- 1(a) through 1(i): Photographs of AGUILAR's residence taken by AGUILAR approximately one month after April 6, 2014.
- 2(a) through 2(g): Photographs of herself taken by AGUILAR on April 8, 2014.
- 3(a) through 3(e): Photographs of AGUILAR's residence taken by AGUILAR approximately one month after April 6, 2014.
- 4(a) through 4(f): Photographs of spent cartridges located at AGUILAR's residence taken on April 6, 2014.
- 5(a) through 5(w): Photographs of AGUILAR's residence taken on April 6, 2014.
- 6(a) through 6(p): Photographs of the interior of AGUILAR's residence taken on April 6, 2014.

- 7(a) through 7(m) Photographs of bullets, bullet fragments and bullet holes located in the interior of AGUILAR's residence, which were taken on April 6, 2014.
- 8 ISP Directive on Weapons Discharge and Deadly Force
- 9 ISP Directive on Use of Force
- 10 ISP Directive on the Restrictions for the Use of an Officer's Mobile Data Computer System
11. ISP Rules of Conduct

SUMMARY OF EVIDENCE

The following is a brief review of the evidence submitted in this case. This summary is not meant to include a complete recitation of all of the evidence presented in this matter. Rather, it is intended to clarify the basis for the Hearing Officer's recommended findings of fact and conclusions of law. The Hearing Officer has specifically considered all of the written and oral testimony and arguments presented in this case, the exhibits, as well as the demeanor of the witnesses.

WITNESSES

1. ANGELICA AGUILAR (pp.29-133), called on behalf of the ISP.

AGUILAR stated that she was an ISP Special Agent for the Statewide Gaming Command. (29). She dated LOPEZ for 2 ½ years, beginning in 2011, and ended by LOPEZ on or about March 29, 2014. (30-31) On March 29, 2014, the same night LOPEZ broke up with her, he sent her a text stating, "All day long, the only thing on my mind has been you." (33) AGUILAR did not respond to the text or contact LOPEZ. (33) She did not hear from LOPEZ again until April 5th, at 12:30 a.m., when she received another text from him. This text message said, "I don't understand why you didn't go tonight, since you really wanted to see Juan. I really wish you had gone. I only thought about you while listening to his songs. Te Amo." (33) AGUILAR said this text referred to her non-appearance at an April 4th Juan Gavilan concert. LOPEZ and AGUILAR had planned to go to the concert with their parents in order for them to meet each other. AGUILAR said that after she and LOPEZ broke up, she sent her aunt in her stead. AGUILAR said she was upset when she and LOPEZ fought and broke up because LOPEZ said he did not want to have children with her, but that the relationship had already been ending, and she got over it within one day. (80, 85, 93) She also said that she did not attend the concert because she did not want LOPEZ to think they were getting back together and also because her brother was fixing her door. (80, 85, 86) LOPEZ' April 5th text at 12:30 a.m. was sent sometime shortly after the concert ended, and AGUILAR did not respond to it.. The next text that LOPEZ sent AGUILAR was at noon on April 5th, when he texted, "Hi. I sent you the money for the payment. Thanks." AGUILAR stated that this text referred to charges LOPEZ had made on AGUILAR's credit card to purchase his furniture. AGUILAR did not respond to this text either. (34) AGUILAR stated that after this noon April 5th text, she had no further contact with

LOPEZ until the morning of April 6th, when LOPEZ appeared at her house. (35)

AGUILAR said that LOPEZ was not invited on April 6th, that she did not know he was planning on coming to her home, and that LOPEZ had not expressed any prior desire to come to her house. (35) Immediately after the April 6, 2014 incident, LOPEZ again texted AGUILAR, while he was still outside of her residence, sitting in the back of the CPD squad car, and she was standing outside with MARKS and the CPD and ISP officers. (64) She said that LOPEZ' text to her said, "Te amo. I'm sorry". (63)

AGUILAR testified that she lived at the same residence where the incident occurred during the entire time when she dated LOPEZ, and that LOPEZ had been to her house and knew she lived with her two minor children. (36) AGUILAR'S children lived with her all week long, and every other weekend they stayed with their father. (127) She said she had not told LOPEZ whether her children would be home or not on April 6, 2014. (127) AGUILAR said that she had given LOPEZ a key at one time because his cousin was going to fix her air conditioner, but that he had given it back to her at some point, but did not know when that was. (36, 94-95) AGUILAR denied that LOPEZ had been given the key in order for him to enter her residence when she was not home. (94) AGUILAR also denied that LOPEZ had ever threatened her in the four years she had known him. (93) However, after the April 6, 2014 incident, AGUILAR stated that she went to court and got an Order of Protection against LOPEZ because she was afraid LOPEZ would return to her house and kill her or harm her children, since they lived with her. (73)

AGUILAR testified that her house had burglarized on April 3, 2014, and the strike plate of her side inner wooden door had been damaged, but not the outer storm door. (86, 87) She said she could see the damage to the inner door only after she opened the outer storm door, as it was not otherwise visible. She said that the wood around the strike plate was also damaged. AGUILAR stated that even though the inner wooden door had been left open after the burglary, she was able to close it properly, although it would not lock. (88) AGUILAR stated that she called CPD on April 3, 2014, immediately after discovering the burglary. (89) When CPD arrived, the officers discovered that one her back patio windows off of the deck had been broken. CPD theorized that a brick from her retaining wall had been used to break the window. (89) There was also some kind of "dust" or "powder residue" left on the back door that she was able to wash off, but that the door itself had not been scratched or damaged. (89, 90) AGUILAR said that the screen and window off of the back patio were repaired prior to the April 6th incident. (91) AGUILAR said that after the April 3rd burglary, but prior to the April 6th shooting incident, her brother came over and replaced the damaged wood around the strike plate and secured the strike plate with new screws on her side door. (124) She said that on April 6, 2014, there was no longer any damage to the side door, the side screen door, the patio sliding door, or the windows off the patio. (124, 125) AGUILAR said that on April 6th, the screen door on the side door was closed and locked, the inner wooden side door was closed and locked. (130) She said that on the inside of her house, not visible to the outside, she further secured the inner door with a two-by-four. (131)

AGUILAR testified that the night before the April 6th incident, she had gone to a party for her friend's daughter. (37) She stayed there approximately four hours, drank one beer, and left at approximately midnight, and went to the Watra Nightclub or Watra Bar (hereinafter referred to as Watra) in Chicago with two of her girlfriends and one of their husbands. (37, 98) Aguilar said she then met MARKS at Watra. AGUILAR stated that she worked for MARKS at the ISP, and had known him since 2007. (38) She had called MARKS after leaving the party, and he had met her and her friends at Watra shortly thereafter. (98) Aguilar drank two Long Island ice tea drinks while at Watra, but said that she was not drunk. (37, 99) AGUILAR said she and the others stayed at Watra for approximately two hours, and that after leaving Watra, she and MARKS went to her house, arriving at 2:00 or 2:30 a.m. (101). MARKS parked his SUV in AGUILAR's driveway behind her car. AGUILAR and MARKS had two margaritas each, although the second drinks were lighter because she ran out of tequila. (101) MARKS stayed overnight, and they went to sleep at approximately 4:00 a.m. (43) AGUILAR stated that she and MARKS kissed at her house, but did not have sexual relations. (84-85) She denied that she and MARKS had any kind of romantic relationship prior to the April 6, 2014 incident.

AGUILAR stated that LOPEZ had met MARKS at least a few times prior to the April 6th incident. The first time she introduced LOPEZ to MARKS at her November 5, 2011, birthday party; the second was when she and LOPEZ and MARKS were at ISP employee Pam Janecek's retirement party; and, the third was when MARKS was a cadet counselor and taught LOPEZ "control and risk tactic" at the ISP Academy. (38-39) AGUILAR said

that both LOPEZ and MARKS had separately acknowledged to her that they had seen each other at the Academy. (40) AGUILAR said that she had MARK's phone number stored in her phone. (40) She also said that she had observed that LOPEZ had seen the name Lee Marks on her telephone multiple times. She described one incident in January, 2014, when she and LOPEZ were still dating, where MARKS had texted her, and LOPEZ had questioned why MARKS was texting her. LOPEZ insisted AGUILAR give him her password so he could open her phone, but she refused, stating she had already given him her password multiple times. (40-41) AGUILAR said she left the room, and that LOPEZ became so enraged he threw her phone against the wall and broke it. (40-41) The next day, January 11, 2014, she and LOPEZ went to the Apple Store, and LOPEZ paid to have her phone replaced. (40) AGUILAR identified an email receipt from Apple dated January 11, 2014, which she said was for the phone replacement. (40-41) AGUILAR also said that on the night of her birthday on November 11, 2011, after meeting MARKS, LOPEZ got upset and asked her, "Oh, looks like you and Lee Marks are super close. Did you ever date him?" She said that she told LOPEZ that she had not dated MARKS, and that they were just close friends. (81)

AGUILAR said that on the morning of April 6, 2014, at approximately 7:30 a.m., she was awakened by a clicking noise from coming from her side door. (108) After that, she said she heard a cracking sound, a noise she could not describe, coming from the back of her house. (108) After the noise coming from the back, which she realized to be gunshots, AGUILAR sat up and looked out her bedroom door, when she heard the blinds moving, and then saw LOPEZ, who had come through window. As LOPEZ came in

through the window, AGUILAR yelled from the bedroom, "It's two police officers in here." (110) She slammed the bedroom door that had been ajar, and said to MARKS, "It's Juan. It's Juan." (46, 109) She then started looking for her gun for self-protection and cell phone to call the police. AGUILAR said that LOPEZ then came into the bedroom, where she and MARKS were. When LOPEZ entered the bedroom, AGUILAR stepped in front of MARKS, and told LOPEZ that he had to leave. (111) LOPEZ then touched or grabbed her on the side of the neck, and pushed her, in order to get her to move from in front of MARKS. (57,111) She said LOPEZ was angry and upset that MARKS was there, because, she assumed, he thought she and MARKS had been intimate. (111) LOPEZ kept telling MARKS that he had to leave, but AGUILAR said she told LOPEZ that MARKS was not leaving. She said, referring to LOPEZ, "I specifically told him that Lee Marks didn't do anything to him, that he had broken up with me, and he had to leave my house." (111) AGUILAR said that she feared for her life when LOPEZ entered the bedroom with his gun. (56) She said that when LOPEZ pushed her, she fell to the ground and bruised her leg, thigh, arm and back. (57)

AGUILAR said she then got dressed, grabbed her weapon and holstered it into her pants, and gave MARKS his weapon, and they all moved into the hallway. (62) She was not sure where LOPEZ' gun was at that time. She then observed MARKS and LOPEZ walk outside the house through the patio door. (62) She continued to look for her phone, and could not find it, so went outside through the back patio door to see if MARKS was okay. (63) Once outside, she saw MARKS and LOPEZ having a conversation. AGUILAR then saw LOPEZ' car, and as she got closer, saw his work computer on the front passenger

seat, opened, with information about MARKS and his address visible on the computer screen. (64) As she approached LOPEZ and MARKS, MARKS gave her a nod, which she took to mean, "go call the police", so she turned around to go inside to call the police. LOPEZ said, "Oh, he's got you like that. Ha." (63) She ignored him, and continued into the house where she finally found her phone and called 911. While she was in the midst of her phone call to 911, she looked outside and saw that the CPD car had already shown up at her house. (63) AGUILAR said that ISP officers subsequently arrived at her house, but she was not sure which ISP officers were present, but that she does not recall having any conversation with them, and they were not in her vicinity while she spoke with CPD at the scene. (113, 114)

AGUILAR testified that her residence sustained damage when LOPEZ fired shots. She said she had bullet hole damage to her patio door, blinds, dining room chair and table, her walls, and her sofa, as well as scratches to her floor throughout her house. (66) After the shooting incident, one of her blinds was missing, as they had been closed before LOPEZ arrival. There was damage to the back patio screen door, and both glass windows facing the patio had been shattered and the screens damaged. (66, 69) One of the shattered windows faced into her dining room, and the other shattered window was off of the back patio facing into her hallway and bedroom. (69) AGUILAR said that her bedroom is located immediately behind her dining room, and that there were bullet holes in her dining room table and chair that had been in front of the dining room window at the time of the shooting. (70) She also said that if you enter her home through the back, you must pass the dining room in order to get to the hall that leads to her bedroom. (68)

AGUILAR said that when standing outside looking into the house from her windows, you could see straight into the hallway and to her bedroom. She said that from outside, you could look through the patio window directly into the hallway and see part of the inside of her bedroom from that vantage point. (69) AGUILAR identified photographs of all the damaged areas caused by LOPEZ' shooting, but stated that all windows and screens had been repaired by the time the photos were taken. (70)

AGUILAR testified that she received a bruise to her arm and to her leg when LOPEZ pushed or grabbed her. (59, 60, 112) She took photographs of her bruises two days after the incident, when she first noticed them, and the photographs were introduced into evidence. (112) She said that she also sustained a small cut on her foot, when a piece of shattered glass got stuck on her foot, but that it had been fine. (112)

AGUILAR said she spoke briefly with CPD after the shooting incident, while they were still outside her residence, but that she was interviewed at length by CPD later, the same day, when she and MARKS went to the police station. (72, 113) AGUILAR said she was at the CPD station for over twelve hours. (128) She said that the CPD detective had told her that she should not press charges against LOPEZ, and that she should let her Department, "stick it to him." AGUILAR said she felt as if CPD was protecting LOPEZ. (73) AGUILAR said she did not recall seeing any ISP officers while she was at CPD station, and that no ISP officers were present when she was being interviewed by CPD. (114) She said she may have told CPD that the incident was a misunderstanding, and she didn't want him arrested, but that if she did, she was referring to "a misunderstanding that

should never have happened". AGUILAR said, "It can't be a misunderstanding when someone comes and shoots at your house. That's not a misunderstanding." (116)

AGUILAR denies being asked whether she wanted to press charges against LOPEZ while she was still on the scene. She said at that time, she was just telling CPD what had happened. (116) She said that she thought LOPEZ was already under arrest, so did not expressly request to have LOPEZ arrested. (116) AGUILAR also said she was aware she spoke with an assistant states attorney at the police station, but did not know who it was, and did not remember details of the conversation. (117,118) AGUILAR said that after the April 6, 2014 shooting incident, she sought and received an Order of Protection against LOPEZ which lasted a few months. (73)

3. LEE MARKS, (pp. 133-190), called on behalf of ISP

MARKS stated that he was a Sergeant with the ISP, assigned to the Medicaid Fraud Patrol Bureau since 2009, but in 2014, he was a Special Agent, assigned to the same unit. (133, 134) He said that prior to the Medicaid Fraud unit, he had been a patrol officer for 5 ½ years. (134)

MARKS said he had met LOPEZ three times prior to the April 6th incident. The first time had been at AGUILAR's birthday at a bar in the city, but he was not sure of the year, possibly 2013. (134) He was introduced to LOPEZ at that birthday party (135) He said he also "crossed paths" with LOPEZ at the Academy, when MARKS was there as an instructor for the ISP cadets, and LOPEZ was there as, MARKS thought, a counselor.

(135) MARKS said he had also encountered LOPEZ prior to April 6, 2014, at a retirement party for a co-worker. He said he was seated at the same table of 8-10 people as LOPEZ at the party. (135)

MARKS testified that he had known AGUILAR for approximately ten years and they had planned to possibly meet up during the night as MARKS thought he would be in the city on April 5th. (136, 166) He said that on the evening of April 5, 2014, he met up with AGUILAR and some of her friends at a bar just off Pulaski. (136) He said he met them, he thought, at about 1:00, the morning of April 6th. (136) At the bar, he drank two Long Island ice tea alcoholic drinks. (136) He denied drinking before arriving at the bar, or being intoxicated that night. (167) He left the bar at approximately 3:00 a.m., and when she invited him, went with AGUILAR to her house, although they drove there separately. (137, 174) This was the first time he had gone home with AGUILAR. (174) He parked in AGUILAR's driveway along the side door of her residence. (137) He had been to AGUILAR's house at least three times prior to this night. (137) He was aware that someone had burglarized AGUILAR's home on April 3, 2014, and knew the door had been damaged, and saw the 2 by 4 piece of wood, but did not know that anyone had tried to break in the back, or that the back windows had been damaged. (165) He was also aware that AGUILAR and LOPEZ had broken up, as she had told him prior to April 5th. (172)

MARKS said the license plate on his SUV was registered in MARK's name, but to his brother's Murphysboro address. (139, 168) He said he lived in Calumet City, but that he

had moved a couple of times in a short period, and so used his brother's address to ensure that he would get his mail. (169, 170) His brother would then send him his mail.

MARKS said he had two more drinks at AGUILAR's, and it was close to 4:00a.m., so he just ended staying. (138) He said that he and AGUILAR kissed while they were in her living room, but nothing more. (175) He slept with AGUILAR in her bedroom, but they did not have sexual relations (138, 157) They both slept in their t-shirts and underwear. (175) He slept on the side of the bed that was closest to the wall. (138) MARKS said he woke up at approximately 8:45 a.m., when AGUILAR said she heard a noise, and then she sat up when she said she said she heard a different noise. The bedroom door was partly open. (139, 140) MARKS then heard a noise that sounded like a pounding outside of the bedroom. (140) MARKS said AGUILAR looked outside of the bedroom door, then slammed the door and jumped onto the bed. (140) AGUILAR then yelled out, "Juan, you need to leave. There's two police officers in here" MARKS said that from his position, he had not been able to see who it was outside the bedroom, so MARKS just repeated what AGUILAR had said, because he understood that the "Juan" that AGUILAR referred to was LOPEZ, her ex-boyfriend. MARKS said, "Juan, you need to leave." (171) (140) MARKS said he next heard gunshots, and jumped out of bed. (141) He started searching for his gun, since he did not know where he had put it, and asked AGUILAR where her gun was. (138, 140-141) LOPEZ then entered the bedroom, appearing very angry, and when MARKS saw the gun pointed in his direction, MARKS immediately raised both hands in the air. (141, 142) He then said, "Don't shoot," and got down on his knees, as the gun was still pointed at him, and he was in fear of LOPEZ.

(141, 189) AGUILAR grabbed MARKS around his neck and said to LOPEZ, "Juan, you better not shoot him. You better not shoot us." (141) MARKS said the gun was then pointed at him and at AGUILAR. (142) LOPEZ said to MARKS, "I can't believe you're doing this to me. We're still together." (142) LOPEZ then told MARKS, "You need to leave." MARKS also said at some point he was closer to the door, and LOPEZ and AGUILAR were to his side and were arguing back and forth about whether they were still together, and that something AGUILAR said had seemed to set LOPEZ off, but MARKS did not recall what she had said. (143, 183) MARKS said that LOPEZ did not touch him while in the bedroom, but that LOPEZ had grabbed AGUILAR around her throat and threw her with one hand to the ground. (142, 183) AGUILAR then got up off the floor, and LOPEZ again told MARKS to leave. MARKS did not know where LOPEZ' gun was at this time as he had turned away, but he became aware that LOPEZ was no longer pointing the gun at him. (179) MARKS did not look at this time to see whether AGUILAR had been injured when LOPEZ pushed her to the floor and does not recall whether he saw injuries or if she complained of injuries. (183, 184)

While MARKS began gathering his things up, LOPEZ took a picture with his cell phone and all three moved out of the bedroom into the living room. (143, 144) MARKS found his gun, which was holstered, but not locked in a cabinet. (163) MARKS denied violating any ISP rules regarding his weapon, as his weapon was in a locked house, with no one present but he and AGUILAR. (163) MARKS said that LOPEZ then used his hand to try to get him to leave out of the side door, but it was blocked with a two by four. (143, 165) MARKS told LOPEZ he could not exit the side door and that they should exit

out the sliding glass door. (143) MARKS said LOPEZ kept insisting he leave, but that MARKS insisted that LOPEZ come with him outside. (181) LOPEZ objected a few times, but eventually went with MARKS. (180) MARKS said that LOPEZ did not harm, strike or push him. (180) He said that he knew LOPEZ had his gun in his pocket, and therefore, did not need to say anything to be threatening. (181, 182)

MARKS said that as he exited the house, it appeared that some rounds had been fired into the sliding glass door, and the window next to that door was shattered. (143, 144) He had to walk over the glass in order to exit the sliding door. MARKS also saw the glass sliding door had been splintered from the rounds, and the blinds were damaged. (151) MARKS said that he and LOPEZ exited the house off the patio, and when they reached the back of MARK' car, LOPEZ said, "Tell me the truth. Did you sleep with her?" (144) MARKS said that at this point, he knew that LOPEZ had the gun in his pocket. MARKS tried to convince LOPEZ to put the gun in his car, and after a few requests, LOPEZ put his gun in the trunk. (145) LOPEZ indicated he was going to leave, but MARKS advised him not to leave as it would only make things worse. (145) LOPEZ tried to get MARKS to get in the car with him, but MARKS refused. (145)

MARKS then heard sirens, and CPD arrived. AGUILAR was inside the house at that time, but at some point came outside. (146) MARKS said a sergeant from CPD who asked him and AGUILAR what they wanted to do. MARKS said he and AGUILAR looked at each other, wondering why the officer was asking this. (146) MARKS did not answer, but pulled the sergeant to the side and told him that LOPEZ had shot into the

house. MARKS and the CPD sergeant walked to the back of the house where he showed the officer the damage that had been done to the door and windows. (147) MARKS said that this officer did not ask many questions, as MARKS was showing him where LOPEZ had shot into the house, so MARKS did not recall telling this officer that LOPEZ had pointed his gun at him, or that he had thrown AGUILAR to the ground. (185, 187)

MARKS said, he did tell a CPD detective who arrived on the scene that LOPEZ had grabbed AGUILAR and thrown her. (190) MARKS denied telling the CPD sergeant that it was a misunderstanding, or a minor altercation. (186) MARKS said that later, ISP Master Sergeants Jimenez (hereinafter referred to as JIMENEZ) and Kmitta (hereinafter referred to as KMITTA) and Sergeant Beck (hereinafter referred to as BECK) also arrived on the scene at the house (148, 149) MARKS saw JIMENEZ speak to LOPEZ while LOPEZ was seated in the CPD squad car, but JIMENEZ did not speak to MARKS or AGUILAR. MARKS said the only conversation he or AGUILAR had with BECK was to respond that they were doing okay when she asked. BECK did not ask either of them what had happened. (149, 162) SMITTA was MARKS' supervisor, and it was MARKS who had called him to the scene. (148, 159) MARKS spoke to SMITTA while still at the scene. He gave SMITTA an overview of what had taken place, but could not recall specifically what he had said. (161-162) MARKS said that he told SMITTA that LOPEZ had threatened him and came into the bedroom with a gun pointed at MARKS. (187)

MARKS said he and AGUILAR then went with CPD to the station, where they remained until 10:00 or 11:00 that evening. (149) MARKS did not recall specifically stating that

he wanted to press charges against LOPEZ. (147) MARKS said he told CPD while on scene at the house, and again at CPD station that LOPEZ had grabbed AGUILAR and threw her to the ground. (147, 148) He said the first question the CPD officer asked him was how many times he had slept with AGUILAR, which was asked while he was still at the scene of the shooting. (154) The CPD officers repeated the same question while MARKS was at the CPD station. MARKS said he repeatedly denied having ever had sex with her, as he understood the use of the word "slept" to mean sexual relations. (156, 157) He said he asked all questions put to him by CPD officers. (158) They were not given the option to sign a criminal complaint against LOPEZ until the following Friday, when a CPD detective asked MARKS to return to the CPD station. Approximately two days after the shooting, MARKS wrote down a narrative of what had taken place, in order to have his account of what had transpired on paper. (188) At the station, on the following Friday, MARKS repeated the story and reassured the officer he was telling the truth, MARKS signed a complaint against LOPEZ. (150) MARKS said he also testified against LOPEZ at the Order of Protection hearing. (151)

MARKS said that he had received ISP training before becoming a patrol officer. (152) He said he had never been trained to shoot or his weapon to gain entry into a home. He said he went to the range and was trained to "engage the threat." (151)

4. OFFICER NANCY DECOOK , her testimony given by Agreed Stipulation (ND), on behalf of ISP (pp. 304-304 of transcript and pp. ND 112-ND141 of Attachment)

The parties signed an Agreed Stipulation that if Nancy DeCook (hereinafter referred to as DECOOK) was called to testify at this administrative hearing, she would be asked the same questions on direct and cross, and would give the same answers to the same, as she did on June 22, 2016 in the Cook County Circuit Court criminal trial, The People of the State of Illinois v. Juan Lopez, Case No. 15 CR 1184, before Judge James Linn. The transcript was attached to the Stipulation and entered into evidence on November 6, 2017.

DECOOK was a forensic investigator for the CPD, where she had worked for 30 years. She had been a patrol officer, an evidence technician, and in Gang Crimes, prior to the eleven years she had been a forensic investigator. (ND112) She stated she was called to the scene at AGUILAR's residence on April 6, 2014. CPD Evidence Technician Edwin Jones also arrived at the scene. (ND133) She met with CPD Detective Sergeant Artiaga, who told her there had been a shooting involving an ISP Trooper and his former girlfriend. (ND114) She observed six fired 40 caliber cartridge casings on the rear deck of the house. (ND115, ND117) She said there were also a metal fragments not embedded, but laying along the bottom track of the rear sliding door that led into the house. (ND115, ND138) DECOOK observed two bullet holes in the window of the sliding door, and also observed that the window just south of the door had been broken inwards. (ND 116), ND125 DECOOK then saw a fired bullet in the kitchen sink and a fired bullet on the west side of the dining table that had gone through a tablecloth into the table. (ND126) She next saw a fired bullet in the wall next to the trash can and also a fired bullet on the floor

of the closet, both of which were located in the hallway that lead to AGUILAR's bedroom. (ND127) DECOOK said that the bedroom is right down the hallway from the back window, and, in a photo taken outside looking inside the house from the back window, she could see the door to AGUILAR's bedroom. (ND128) She then saw broken glass all over the floor in the kitchen/dining area and also leading partially into the hallway leading to the front of the house. (ND116) DECOOK said the living room was located to the left of the bedroom. (ND129) DECOOK videotaped, diagrammed and photographed the scene. (117) The photographs she took were introduced in this ISP administrative hearing, but the diagram and video were not. However, the stipulated testimony admitted showed that DECOOK answered specific questions concerning each of the photographs in her testimony, and identified the damage, broken windows, fired bullet cartridges/casings and bullet holes shown in each photo. (ND126-130) All fired bullets inside and outside of the house were inventoried and sent to the ISP Crime Lab for analysis. (ND132) DECOOK said she put down markers at each location she saw evidence and videotaped the scene. (ND135)

DECOOK examined the exterior side door on the north side of the house for damage, markings, and pry marks and did not observe any damage to the exterior of the door. She did not recall whether the side door on the north had a screen door. (ND136) The driveway is also on the north side of the house. (ND121, ND124) She also examined the same side door from the interior and did not observe any damage to the interior of the door. She saw a two by four propped up against the door. (ND119) DECOOK said that

she did not observe any damage to the front door or to the south side of the house.

(ND123)

DECOOK observed three cars in the driveway: a van was the first car in the driveway; behind it an SUV, and, behind that a black Chevrolet Monte Carlo belonging to LOPEZ.

(ND121) She saw an open laptop computer on the front passenger seat of the Monte Carlo. (ND123)

DECOOK said the bed was located on the north wall of the bedroom. She said that from the doorway of the bedroom looking out, she could see the side interior door with the two by four, as well as the window at the back of the house, and could also see part of the sliding door in the back as well. (ND129, ND130)

5. ISP SERGEANT CORY MORIN, (pp. 205-222), on behalf of ISP

ISP Sergeant Cory Morin (hereinafter referred to as MORIN) stated that he was an ISP Sergeant, assigned to Crime Scene Services for seven years. (205) He was assigned to process the scene at AGUILAR's home on the morning of April 6, 2014. He first met with CPD officers, investigators and forensic personnel., and was informed that CPD would be in charge of processing scene, but MORIN would assist as needed. (206)

MORIN said he did an initial walk through the scene with DECOOK, and saw at least two bullet holes through the rear sliding door, as well as a damaged rear window located adjacent to that sliding door. (206, 207) MORIN said that although the back window did

not have obvious signs of a bullet hole, the glass was shattered, and there were “defects”, which let him to believe that a weapon was fired through the window. (209) He also saw spent cartridge casings found on the back deck on the west side of the house. (207)

MORIN said he had been told that there had been a burglary at the home a few days before and that, supposedly, the side door had been kicked in, but that when he examined the door, he could see no signs of any forced entry. (222) He observed that there was a barricade type thing on the inside of the side door, and that the side door had no windows. (221)

MORIN then entered the home and saw significant fragments of glass throughout the kitchen floor, the dining room floor, as well as the floor of the hallway leading directly to AGUILAR’s bedroom and to the east side of the residence. (214, 215) He estimated, based on the photographs, that the glass shrapnel was present approximately 12 to 15 feet from the back window on the east side of the dining room. (210) He also saw a bullet that was pried out of the wall on the east side of the dining room near the garbage can that was almost complete, a bullet in the sink, and a bullet pried out of the dining room table. (212, 219) MORIN said there was also a bullet fragment in the hallway in a linen closet and four additional bullet fragments found on the dining room floor. (212)

MORIN said that at least five bullets had been fired into AGUILAR’s home. (213) He said that based on the thicker, double-pane type of glass found on the floor, and the bullet impact, he believed that at least two bullets had traveled at a downward angle from the sliding door, two of which had impacted the kitchen floor. (213, 218) He said that at least one bullet pierced the sliding door and impacted the kitchen floor, but that he was

not sure if there were other shots that did not pierce the door. (216) MORIN said at least three bullets were shot through the damaged window: one impacted the east wall of the dining room; one impacted the chair in the dining room; and, the third impacted the dining room table. (213) He further stated that bullets tended to break apart when they travel through glass, as they tend to shred the copper jackets off of their lead core. MORIN said that upon fragmentation, the bullet's trajectory can change somewhat, but that the bullets that went into the east wall, the dining table, and the dining chair were clearly shot from the broken window. (214, 220) He said that the bullet will fragment the window and cause glass shrapnel, which, at a minimum, poses a risk of injury to people. (214) During the hearing, MORIN identified photos showing each cartridge casing, the bullet holes, the layout of the residence and the damage he observed that morning at the scene. (208-9)

6. COLONEL JOANNE JOHNSON, (pp. 224-283) on behalf of ISP

Colonel Joanne Johnson (hereinafter referred to as JOHNSON), said that she was a Colonel for ISP, assigned to the Division of Internal Investigations (hereinafter referred to as DII) since November, 2016, where she oversees the two DII offices in the north part of the state and also chairs the ISP Disciplinary Review Board. (224, 225) She said she was assigned to LOPEZ' case before the ISP Review Board, and did an overview of the case file, but was not responsible for making any ultimate decisions concerning him in this matter. (226) JOHNSON said that since she became a Colonel, she had been involved in between 25 and 50 disciplinary actions, some of which involved the discharge of a weapon. (235) She denied that DII personnel would ever take oral

statements while on the scene of an incident. JOHNSON said that her knowledge about the LOPEZ case was not from personal observation, but came from reviewing the reports and interviewing DII agents. (260)

JOHNSON said that based on the ISP Directive regarding the use of deadly force and the discharge of a weapon, that LOPEZ had used deadly force on April 6, 2014, and that LOPEZ' conduct had violated the ISP directive on deadly force as LOPEZ did not follow the ISP procedures pertaining to notification and communication and conduct after he used deadly force. (227-28) She said the directives apply to ISP Officers when they are on and off duty. (228) JOHNSON said the Directive on the use of deadly force applies to ISP officers who are witnesses in the same way it applies to officer non-witnesses. (259)

JOHNSON acknowledged that troopers are required to take police action if they believe they are witnessing a crime, whether they are on duty or off duty. (250) JOHNSON said that an officer can use deadly force while off duty in the face of an imminent threat. (251) She said she was not aware of any ISP policy that prohibited troopers from fraternizing with co-workers or engaging in a sexual relationship with someone who works in the same area. (251)

JOHNSON stated that LOPEZ violated the ISP Directive on use of force, other than deadly force. She said this Directive requires the officer to consider several factors before using force with a weapon, or force of any kind. JOHNSON said the officer should consider the threat to himself or to another by the subject, consider the subject's

ability and opportunity to inflict great bodily harm, consider the size of the people involved, whether the subject is under the influence of a substance, and consider the probability that there will be great bodily harm or death to the officer or another if the subject is not arrested or controlled immediately. (230)

JOHNSON next described ISP Directive SRV 208 regarding the use of an officer's mobile data computer (MDC) system, which says in part in paragraph 3D1, that, "The use of the MDC is restricted to official ISP business." (230) She said that LOPEZ was not conducting official ISP business on April 6, 2014. (232) She said that using the MDC to obtain LEADS information about a subject or a vehicle outside of official ISP business is unauthorized. JOHNSON said that running a plate or other information of an individual for your personal gain, not as a result of a traffic stop or handling an official ISP duty call is unauthorized. (232) She further stated that if a vehicle is left unattended, the MDC should be removed from that vehicle, and also that the MDC should not even be in one's personal vehicle. (233)

JOHNSON then discussed the ISP Rules of Conduct, and also the Disciplinary Matrix, which is an addendum to the Rules of Conduct, and serves as a guideline for ISP personnel to determine the appropriate discipline for a specific violation of a Rules of Conduct. (236, 237) JOHNSON said the Rules of Conduct and Disciplinary Matrix are available to all troopers, including Trooper LOPEZ. (236) JOHNSON testified about each of the ten charges brought against LOPEZ, and said that the highest authorized level of discipline for Charges 1 through 4 of the Complaint was level 7 misconduct up to

termination first offense. (238-39) She said the ISP was seeking termination because LOPEZ violated state criminal laws, and even though he was not found guilty beyond a reasonable doubt in criminal court, his behavior fit a violation by a preponderance of the evidence of each of the laws set forth in the Complaint: aggravated discharge of a weapon (Charge 1), reckless discharge of a weapon (Charge 2), home invasion with a firearm (Charge 3), and home invasion (Count 4). (237-240, 259-60) JOHNSON said that LOPEZ committed home invasion with a firearm when he made entry into the residence, and then made a show of force by grabbing or pushing AGUILAR, and by threatening a show of force by his firearm. (278) She also said that the Department does not need to prove all four charges seeking termination, as proving one termination count is sufficient to terminate an officer. (281)

JOHNSON stated that the highest authorized level of discipline for Charge 5, which alleges that LOPEZ committed reckless conduct, is level 4 misconduct, 31-45 days, first offense. She said that LOPEZ committed reckless conduct when he recklessly discharged his firearm into the glass sliding door and window of AGUILAR's residence, endangering the safety of another. (241)

Charge 6 alleges that there was a violation of paragraph 3A-2 of the Rules of Conduct, pertaining to a judicial finding of guilt, when LOPEZ was found guilty of reckless conduct beyond a reasonable doubt in criminal court. (241) JOHNSON stated that the highest authorized level of discipline for Charge 6, which alleges that LOPEZ committed reckless conduct, is level 4 misconduct, 90-180 days, first offense. She said that a

determination of guilt in criminal court is prima facie evidence of non-conformance to ISP laws. (242)

JOHNSON stated that the highest authorized level of discipline for Charge 7, which alleges that LOPEZ failed to answer questions truthfully during his ISP administrative interview, is level 7 misconduct, up to termination, first offense. (243) JOHNSON said LOPEZ falsely described the condition of AGUILAR's side door on April 6, 2014, and he falsely denied grabbing AGUILAR by the neck and pushing her to the ground on the same day, (242) JOHNSON said there may have been additional false statements, but these were the only two included in the complaint. (255) JOHNSON said that she believed LOPEZ made a false statement about the condition of the side door when he said in his administrative interview that the door looked like it had been kicked in, but the CPD crime scene investigator said she did not observe any damage to the side door, and AGUILAR also said there was no visible damage to the door since repairs had already been made. JOHNSON said she did not personally go to the scene of AGUILAR's residence and did not personally talk to DECOOK. (256-7) JOHNSON said she believed LOPEZ lied in the administrative interview about grabbing AGUILAR around the neck after she read in the case file that AGUILAR and MARKS had alleged this in their interviews, and she read that AGUILAR had bruising. (257)

JOHNSON said that since ISP officers are subject to testimony as part of their work, and it is incumbent upon them that they be credible as witnesses. (243) She further stated that when an officer is found to have a credibility issue within ISP, that it jeopardizes their

credibility in court, and contributes to a lack of integrity within the agency as a whole.

(243) She said other ISP officers have been terminated for failing to testify truthfully during their administrative interview, but numerous others were not terminated for failing to testify truthfully. (253) JOHNSON acknowledged that the officer has to intentionally mislead or lie about an issue that is germane to the investigation at hand to violate the Rule of Conduct. (254

JOHNSON stated that the highest authorized level of discipline for Charge 8, which alleges that LOPEZ' conduct brought the Department into disrepute, is level 2 misconduct, 4-10 days, first offense. JOHNSON said this charge is usually brought when another police department has become involved in the matter brought about by the ISP officer's conduct, so that it is now known outside of ISP, and discredits the Department. (245)

JOHNSON stated that Charge 9 alleges that LOPEZ misused his mobile data computer (MDC) system. She said that LOPEZ was not conducting official ISP business on April 6, 2014, when he used his MDC to obtain LEADS information and run the registration for MARKS' vehicle. (245) JOHNSON said the Department acknowledges that an ISP officer wields a lot of power, and can get a great deal of personal and other information about a person with his or her MDC, and so it is important it is used properly, to protect privacy. (246)

JOHNSON stated that the highest authorized level of discipline for Charge 10, which alleges that LOPEZ' conduct was unbecoming an officer, is level 1 misconduct, reprimand to 3 days, first offense. (246) She said that when LOPEZ discharged a firearm into the sliding glass door and window of his ex-girlfriend's residence, was questioned by CPD, was criminally charged and found guilty of reckless conduct, it reflected horribly on the Department and discredited the integrity of the Department. (246)

JOHNSON said that ISP officers take an oath, and are held to a higher standard than average citizens. (247) She said that troopers need to be able to carry a gun in order to facilitate essential duties of his or her position. She said that an ISP officer has to act at a moment's notice to protect and preserve, and must be able to lawfully carry a firearm, and LOPEZ' "actions on that day showed that he did not possess clear and good decision making..." (248) She further stated that, "... he (LOPEZ) would be a liability to the organization if he were put back out in his previous duties as an officer with the State Police, and having the ability to effectuate arrests, stop people, engage in other arrest operations." (248)

JOHNSON said that even though LOPEZ was an armed officer and is supposed to do his job whether on-duty or off-duty, LOPEZ had a couple of choices when he arrived at AGUILAR's residence and he observed what he "phrased" as a suspicious vehicle. (262) He could have called for assistance from the local police department right then, but did not. JOHNSON said officers were always taught and trained and cautioned to not feel

the need to run into a situation singlehandedly, especially in a metro area where there are other law enforcement agencies. (262) She acknowledged that an officer might have to act alone, if there is an active shooter, or someone is about to be harmed seriously if the officer does not take any action. (263) JOHNSON stated that she believed that when LOPEZ arrived unannounced and pulled into the driveway of his ex-girlfriend that he had not seen in a while, and he saw an unknown vehicle parked in the driveway, that this did not give him sufficient basis to take the action he did. (263) While there was no specific ISP policy prohibiting having an MDC in a personal vehicle or using an MDC in a personal vehicle, JOHNSON said it was unusual. She also said that LOPEZ violated policy when he became suspicious and opened the MDC and used it to look up MARKS' car since this was not for official police business. (264) JOHNSON said that LOPEZ also violated police when, after he ran the plate using the MDC and found the owner's name was unfamiliar, LOPEZ got out of his car and approached the house. (266) She said that LOPEZ further violated policy when he walked around to the back of AGUILAR's house, went up on the deck/porch, and gained entry into the house uninvited in the manner in which he did. (268) JOHNSON said she did not know whether LOPEZ knew there had been damage to any door prior to April 6, 2014. (271) JOHNSON noted that LOPEZ had a telephone with him in the car, and could have called AGUILAR, if he thought she was in the house. (268) LOPEZ also could have knocked on the door and windows if the bell was not working.

JOHNSON said an officer must be able to articulate why he or she believed it was necessary to use deadly force, but that she did not believe that his stated basis was

sufficient. (269) She said she understood that LOPEZ had stated that he knew there had been a prior burglary at the residence, that LOPEZ said he saw marks on a door and that it looked like it had been kicked in, that LOPEZ went around back and said he saw a unknown black man, and that LOPEZ said he heard screaming from the bedroom, and thought AGUILAR was going to be harmed. (269, 270) JOHNSON said that even assuming LOPEZ' stated basis for using deadly force, that she did not agree deadly force was justified, and did not feel that LOPEZ' stated beliefs were reasonable. (272, 278) She said that if LOPEZ had seen an unknown man while looking into the back window, LOPEZ should have pounded on the window, or called out AGUILAR's name, or announced his office and made his presence known, and should have called 911. (272-273) She said there was not a basis for using deadly force just because LOPEZ saw a man standing in his ex-girlfriend's bedroom, a man that he had been introduced to three times. (273) When JOHNSON was given a hypothetical scenario, she said you would have to take a lot of leaps, but that if LOPEZ had known for sure AGUILAR was home, and if he saw a man standing over her with a knife, that would be a different set of facts, and that "by having a weapon raised over someone's body, this is imminent threat of death or bodily harm". (274-276) JOHNSON noted the difference between seeing a weapon about to be used and just knowing there was a weapon in the general vicinity. (275) She said "Imminent threat means I have to know if I don't act right now using the force that I'm allowed to use by law, or someone is going to be killed or caused great bodily harm, or myself, then I can use that, and then I can articulate why I had to use that after the fact. (276)

JOHNSON stated she believed that LOPEZ lied in his administrative interview when he said that he believed AGUILAR was the subject of a crime, and that there had been damage to the door, and that LOPEZ was merely been trying to build a case to justify his actions “by building the steps that a crime was occurring within and I need to continue on in the color of my office to make sure that Angie-that everything is okay. She said that when LOPEZ said that he saw a strange car in the driveway that was registered to someone unknown, that it did not really happen. (279) JOHNSON said the fact that he lied about whether or not there was damage to the door is important, because he used it to give him justification for carrying out his further, and more severe, actions. (280)

7. SPECIAL AGENT SHERISE GIPSON, (pp.190-197), called by ISP

ISP Special Agent Sherise Gipson (hereinafter referred to as GIPSON) stated she was a Special Agent in the DII, where she investigates, and assists in investigations of a criminal or administrative nature. (191) GIPSON said that she was assigned to assist a Sergeant Ogarek in his investigation of the LOPEZ case, but that she was familiar with the case. (192) She said that Sgt. Ogarek ran a LEADS check and determined that LOPEZ had initiated a LEADS inquiry on April 6, 2014, at approximately 8:41 and 53 seconds a.m. (193) LOPEZ had run license plate #233460, that came back to Marks, Jr., Lee H., with a VIN number and an address of 809 South 20th Street, in Murphysboro, Illinois. (194) GIPSON said the report was run by LOPEZ, but that she had not seen any other response. GIPSON said that when an officer is off-duty, he or she can only run a LEADS report when he or she is following up on a crash, or some other incident that had

been started while on duty. (195) She did not know whether an officer could run a report while off-duty if it had nothing to do with one's official duties. (195)

GIPSON said that she was present with Master Sergeant Jose de Jesus at the administrative interview of LOPEZ following the shooting incident. She advised LOPEZ that he was allowed to have an attorney present. (196)

8. MASTER SERGEANT GEORGE JIMENEZ, (pp. 297- 304), called by ISP

ISP Master Sergeant George Jimenez (hereinafter referred to as JIMENEZ) stated that he had been an ISP police officer for approximately twenty years, and a Master Sergeant since April 1, 2014. (299) He met LOPEZ in the ISP Honor Guard. JIMENEZ said he had had a personal conversation with LOPEZ about AGUILAR in fall or winter of 2013, and had advised LOPEZ to follow his instincts and concentrate on his work. (300) On April 6, 2014, he was at home and received a phone call from LOPEZ. He said that LOPEZ was distraught and crying, and said he had confronted his girlfriend with another man inside the house. (301) LOPEZ said he was sitting inside his car, and told JIMENEZ that his firearm was in his trunk. (301) JIMENEZ said he told LOPEZ not to do anything and to stay in the car, and that he would be there in a couple of minutes. JIMENEZ said he drove to AGUILAR's house, and when he arrived, he saw that CPD was already at the scene and two ISP Master Sergeants were arriving. (302) He told the two Master Sergeants about his phone conversation with LOPEZ. LOPEZ was seated in the CPD squad car, and called JIMENEZ over to the car. (302) JIMENEZ said that LOPEZ was

still distraught and crying, and JIMENEZ saw his hand was bleeding and told him to calm down. (303) The next time JIMENEZ spoke to LOPEZ was a few days later when he went to LOPEZ' house to pick up LOPEZ' ISP equipment. (303)

9. TROOPER JUAN LOPEZ, (pp. 12-28), called by ISP as an adverse witness, (pp.321-388) and also called on behalf of himself

LOPEZ stated that he was 32 years old, grew up in Pilsen, attended Cristo Rey Jesuit High School, and was present in court with his parents and girlfriend. (321, 322) He then received his bachelor's degree in criminal justice from Loyola University of Chicago, where he was very involved, and served as president of the Criminal Justice Organization there. (325). He stated he had long been closely involved with his church, where he had been an altar boy for ten years, and that his priest had testified earlier in this matter on his behalf. (324) TROOPER JUAN LOPEZ

LOPEZ, age 32 at the time of the hearing, was hired to be an ISP officer sometime in 2009. (326) Upon his hiring, LOPEZ went to the ISP Academy in Springfield, where he completed a six-month training program, and thereafter, was assigned to work as a Trooper in the Chicago division. (327-8) In addition to other things, LOPEZ received training regarding the use of force and the discharging of his weapon during his training in Springfield training. (13) Subsequent to his Springfield training, LOPEZ was assigned to various field training officers for a twelve week period. After the twelve-week period, LOPEZ worked alone in his patrol car. (329) He responded to medical and domestic

calls, car accidents, rollovers and DUIs. (329-30) Thereafter, he applied for and was appointed to the ISP Honor guard that represents the ISP at dignitaries and former officers' funerals. He attended a two-week training program in Springfield for the honor guard. (328)

LOPEZ stated that he did not remember when he first started dating AGUILAR, but dated her approximately 2 1/2 years altogether, after meeting her through the Hispanic Law Enforcement Agency (HILEA). (330, 331) He stated that he broke up with her approximately one week prior to the April 6, 2014, incident. He believed that AGUILAR had trust issues from men cheating on her, knew that she had been married young, and had two children. (331) He said she would text him and wonder why he had not answered her phone calls. (332) LOPEZ said he and AGUILAR broke up many times during the relationship, and kept going back and forth, and that the relationship was not healthy, and so he broke up with her one week before the April 6, 2014 incident, after AGUILAR had become jealous of another woman. (332, 336) LOPEZ said he believed AGUILAR was distraught and knew AGUILAR wanted to get married and wanted him to move into her house. (336) LOPEZ said he and AGUILAR had verbal arguments, "all the time," but that he never struck her. (336)

LOPEZ said he and AGUILAR had planned to go to the concert on April 4th so their parents could meet, and they had argued about it, because he felt AGUILAR was making a big deal about it. (338) LOPEZ said that he only contacted AGUILAR during the week between the conversation wherein he broke up with AGUILAR, and the April 6

incident because she had made such a big deal of the concert arrangements. He said when he contacted her after the concert on April 4th, he was just telling her that he wished she were there since she made such a big deal about it. (339)

LOPEZ said that in the same phone conversation that he broke up with AGUILAR, he also told her that he would be picking up his stuff the following Sunday, his day off, and she agreed. (334) LOPEZ said he had clothes and tools and other things at AGUILAR's house. LOPEZ said while he dated AGUILAR, he spent a great deal of time at her house, and had a key to go in and out whenever he wanted. (335) LOPEZ said that on Saturday, April 5th, he brought a lady to a family event and she had stayed with him that night, which was the night before the incident. (340) He said that the lady left his house on the morning of Sunday, April 6th, and he told her and his mom that he was going to AGUILAR's house to pick up his stuff. (341)

LOPEZ said he took his MDC with him that morning because he needed to do work and finish his DUI reports. He said other officers did this too, and he was never instructed that this was improper. (343) He said that he brought them to AGUILAR's house because he would sometimes read them out loud to AGUILAR, and she would give her opinion if something did not sound right. (343) LOPEZ said he did not call her prior to going to her house that morning because he had already told her he would be coming on Sunday. (344) He said that prior to April 6th, he had no idea who MARKS was, and did not know MARKS was at AGUILAR's house. (344)

LOPEZ said he arrived at AGUILAR's after 7:00 a.m. He parked in front of her house and noticed two abnormal things: that her two personal cars, which were usually kept in the garage, were instead both in the driveway, and that there was an older SUV that he had never seen before, behind AGUILAR's cars in the driveway (345, 346) LOPEZ thought the SUV was blocking the other cars. (346) LOPEZ decided that this was "weird" to him, and "out of the normal," and thought that a crime was going on since it did not make sense to him. (346) LOPEZ ran the plate of the SUV, which came back to Lee Marks, who lived outside the area and was unknown to LOPEZ. (347) He thought, "that's even more weird." (347) He said that he did not care if AGUILAR was "hooking up" with someone, and that he did not run the plate because he was jealous, but because he was a police officer, and was aware of potential crimes. (347, 348) LOPEZ denied having met MARKS, talking to him or having a drink with him, prior to April 6, 2014. LOPEZ said he not recall whether he was at the birthday party or retirement party or during cadet training, where MARKS and AGUILAR had testified that LOPEZ and MARKS had met before, but LOPEZ acknowledged that he had been an ISP cadet counselor, and it is possible he came into contact with MARKS. (364, 386)

LOPEZ he walked up the path to the side door, the door he regularly used when at AGUILAR's house. The driveway is located on the side of the house. LOPEZ said he had left his phone in the car. (350, 352) LOPEZ tried to open the side storm door, but it was locked from the inside, which LOPEZ felt was unusual since it had never been locked in two and a half years. (350) He looked to his left and saw what he thought was damage on the interior door as if someone had kicked it on the plate. (350) He said he

could see that the doorknob area was completely damaged, even though the door was closed. (350) He thought that the door frame and the door were both damaged, and that someone had broken into the house. (351) LOPEZ said his “alert level” went, “all the way to the top.” (352) He started thinking like a police officer and wondered if someone was in there, and whether AGUILAR was being harmed. (352) After deciding that someone had broken in, LOPEZ said he started to investigate, as trained, by walking towards the back of the house, to the sliding door and window. (352) LOPEZ said he did not believe he needed to call 911, because he was a trained police officer and he knew how to act. (353)

LOPEZ said that when he got to the back door he noticed scratches on the glass of the sliding door, which he thought was unusual, and wondered whether someone had kicked it. (354) From the window he could see into the bedroom and saw “a black man just standing there and within seconds the door was slammed.” (354) LOPEZ did not remember what the man was wearing or what he was doing at that time. LOPEZ said he then heard screaming, and “that’s when I knew something was going on.” (355) He heard AGUILAR saying, “get out of here” and “help.” LOPEZ said he did not know what was going on, and did not know whether she was being raped or murdered, but he thought she was being hurt. (356) He thought he had the key to her house with him, but said he did not use it because it did could not be used on the storm door. (356) He said he next tried to open the back sliding door and the back windows, but could not do so. (357) LOPEZ said he decided to make entrance, and pulled out his weapon and aimed down, toward the bottom of the glass sliding door because, he said, “if I shot straight, the bullets

could have gone anywhere.” (359, 360) He said he tried to avoid hitting anyone by pointing his weapon down, since he knew no one lived downstairs. (359) LOPEZ agreed that he was using deadly force by shooting his weapon at this downward angle. (384) LOPEZ said that after shooting some rounds, he decided that he couldn’t shoot out the door glass, so he switched to the window, which he also shot at in a downward angle. (360) LOPEZ said the window was covered with blinds on the interior and he could not see into the house through the window, but he could through the sliding door. (385) He said he shot the window, which shattered, and announced himself twice, before and after entering the house through the shot-out window, as an armed off-duty ISP officer, and that he was coming in. (360) Upon entry, LOPEZ noticed glass shrapnel throughout the hallway and house. (384)

Upon entering the house, LOPEZ said he asked AGUILAR if she was okay, since he still heard “constant and continuous” screaming from the bedroom, and could hear the words, “get out”, and believed she was in distress.(361) He did not hear the words, “Hey. We are two state troopers in here” or “Juan, go home.” (362) He said he walked toward the bedroom with his gun at “low ready”, meaning that he held it with two hands facing downward, as he was trained to do. (362) He said that at least two minutes had passed between the time he entered the house and the time he opened the bedroom door with his left hand, holding the gun with his right. (363) He said he opened the door and saw AGUILAR and MARKS. He asked AGUILAR if she was okay, and AGUILAR said everything was good, and that they were both state troopers. (365) LOPEZ said that once he walked in, he figured out that the situation was not as he had thought. He said he

didn't see anyone being beaten or hurt, so he then put his gun back in its holster. (365) LOPEZ said he apologized to both AGUILAR and MARKS and said he thought someone had broken into the house. He said AGUILAR responded that she bet LOPEZ was the one that broke into her house on April 3rd. (366) LOPEZ said he was not upset to find AGUILAR with another man. He told AGUILAR that it was a misunderstanding and that he would pay for and did pay for the damage to her house. (366) LOPEZ said he never noticed if MARKS was on his knees with his hands in the air. (368) LOPEZ denied ever touching MARKS or AGUILAR, and denied pointing the gun at either of them. (369) LOPEZ denied ever acting out of jealousy or anger or malice that morning. (378) LOPEZ stipulated that he answered no when he was asked by GIPSON at his administrative hearing, "During our interview, it was discovered that you had grabbed Special Agent Aguilar by her neck and you pushed her. Is this true?" (24)

LOPEZ said that he was in the bedroom only seconds, and then told them that he was going to leave to go outside and wait for the police. (368, 370) MARKS got dressed and directed him to the back door, stating he could not use the side door as it was barricaded with plywood. (368, 370) LOPEZ said he knew he would have to call someone to make reports and take statements. He said that when he and MARKS were outside, they did not touch or argue, he put his weapon in his trunk to secure it, and waited for the police to arrive. (370) LOPEZ admitted that he testified at the Order of Protection hearing and also had told the CPD officer that came to the scene that he had asked MARKS whether he had slept with AGUILAR. (24, 25) LOPEZ said he did not call the police, but they were already arriving. (371) He said he heard sirens, and got his cell phone. (372)

LOPEZ said he briefly told the officers what had happened, which, he said was similar to his testimony in this hearing. (375) He saw MARKS talking to an officer. LOPEZ then called JIMENEZ, his supervisor from ISP, and told JIMENEZ he was involved in an incident and to notify the proper people in the chain of command. (373, 374) LOPEZ stated that after he was placed in the squad car, he texted AGUILAR and apologized, and also telephoned her twice, but she did not answer. (374) LOPEZ said that when he arrived at CPD station, he gave a more detailed statement to the officers and the assistant state's attorney. (375) LOPEZ said he stayed at the station from 9:00 a.m. until 5:00 p.m. on April 6th, but was released from custody that day without being charged. (376)

LOPEZ got a ride home from the station from JIMENEZ. He said that the next day he reported for work to ISP, where he was suspended with pay. (377) LOPEZ said a few days later, his lieutenant called him and said AGUILAR had received an Order of Protection against him, and that he was now suspended without pay. (377) LOPEZ said he testified at the order of protection hearing and was represented by an attorney. (379) LOPEZ said that almost two years after the April 6, 2014 incident, he received a phone call that he was being charged in criminal court, and would have to turn himself in the next day. (378) When LOPEZ testified at the order of protection hearing, he did not mention that he went to AGUILAR's house to pick up his things. He said he went to AGUILAR's house for three intended reasons: 1) "I had already broken up with her a week ago. I still wanted to maintain my friendship with her"; 2) "I wanted to go to church with her"; and, 3) "I was going to ask her to check a report for me." (383)

10. IVAN PANTOJA, (pp. 286- 288), called on behalf of TROOPER LOPEZ

Ivan Pantoja (hereinafter referred to as PANTOJA) stated that he was a CPD police officer, and that he had been a friend of LOPEZ for approximately ten years, since they had both attended Loyola University in Chicago. (286) He stated that LOPEZ was a great friend to him, that he was honest and religious, and that PANTOJA wanted to show his support for LOPEZ. (287) He said that LOPEZ had high standards, not only as a person or friend, but also as a police officer. PANTOJA said he was not testifying on behalf of the CPD. (288)

10. FATHER SEAN O’SULLIVAN, (pp. 289-291), called on behalf of
TROOPER LOPEZ

Father Sean O’Sullivan (hereinafter referred to as O’SULLIVAN) stated that he had known LOPEZ since LOPEZ was in second or third grade. He was LOPEZ’ counselor in high school, but then O’SULLIVAN returned to the Church, and so became the Pastor of the church where LOPEZ and his family attended, as well as a friend. (289)

O’SULLIVAN said he knew LOPEZ to be a good, truthful man of good moral character. He said LOPEZ was very helpful at fundraisers, outreach, and other events, and was very involved in different kinds of activities. (290) O’SULLIVAN said LOPEZ was dedicated to his family, and when he is not sure of something, he would seek help. (290)

FINDINGS OF FACT BY THE HEARING OFFICER

After hearing oral argument by Petitioner and Respondent, and reviewing the written and photographic exhibits tendered by the parties, the Hearing Officer makes the following findings of fact:

1. The ISP Merit Board has jurisdiction with reference to this case.
2. LOPEZ, age 32 at the time of the hearing, has been an ISP patrol officer since approximately 2009, where, after finishing the ISP Academy, he was assigned to the Chicago District.
3. AGUILAR is an ISP Special Agent, assigned to the Gaming Unit, and had dated LOPEZ for approximately 2 ½ years, but on March 29, 2014, approximately one week prior to the April 6, 2014 incident, LOPEZ broke up with AGUILAR by telephone.
4. MARKS is an ISP Sergeant, assigned to the Gaming Unit.
5. After LOPEZ broke up with AGUILAR on March 29th, they had no text, phone, computer or personal conversations between their breakup and April 6th.

However, LOPEZ texted AGUILAR three times after the breakup, but she did not respond in any way: 1) on March 29th, the same night of the breakup, at 10:12 p.m., when LOPEZ texted AGUILAR, “ All day long the only thing on my mind has been you”; 2) On April 5, 2016, at 12:30 a.m., when LOPEZ texted her after she did not appear at a planned concert, “I don’t understand why you didn’t go tonight, since you really wanted to see Juan. I really wish you had gone. I only

thought about you while listening to his songs. Te Amo.”; and, 3) On April 5th, at approximately 12:00 p.m., when LOPEZ texted AGUILAR, “Hi. I sent you the money for the payment. Thanks.” None of these texts mentioned LOPEZ want to or planning to come to AGUILAR’s house to retrieve his belongings.

6. After they broke up on March 29, 2014, LOPEZ and AGUILAR had not made any plans or arrangements for LOPEZ to pick up his things at AGUILAR’s house, or to come to AGUILAR’s house for any reason. Nor were there any plans made prior to the breakup for LOPEZ to come to AGUILAR’s house to take her to church, to check his ISP reports, or for any other reason.
7. On April 5, 2014, AGUILAR and MARKS went to a bar in Chicago sometime after midnight, and upon leaving the bar at approximately 2:00 a.m., they both went to AGUILAR’s house and parked their cars in AGUILAR’s driveway. Both MARKS and AGUILAR drank two drinks at the bar, and had two more drinks at AGUILAR’s house.
8. AGUILAR and MARKS went to sleep in AGUILAR’s bedroom at approximately 4:00 a.m.
9. At approximately 8:30 a.m., LOPEZ took his MDC with him, and drove to AGUILAR’s house and parked outside her residence. He saw AGUILAR’s car in the driveway, and saw an unknown SUV with license plates 233460 behind her car.
10. LOPEZ wanted to know whose SUV was there parked on the driveway, and some time between 8:45 a.m. and 9:00 a.m., he used his MDC to run a LEADS search on the SUV with plates 233460, and determined that the SUV was registered to

MARKS, with a Murphysboro, IL address. LOPEZ was not carrying out official business, and merely wanted to know the name of the owner of the SUV for personal reasons.

11. LOPEZ was familiar with MARKS, as he had met him three times. The first time was when they both attended AGUILAR's birthday party. The second was when LOPEZ and MARKS both attended a co-worker's retirement party, and the third time was when LOPEZ and MARKS were both at the ISP weeklong cadet training program at the ISP Academy. LOPEZ also knew that MARKS had telephoned AGUILAR in the past, as LOPEZ had thrown her cell phone and broken it in 2011 after seeing MARKS had left a text message. LOPEZ then paid to buy AGUILAR a new replacement phone.
12. LOPEZ was upset when he saw someone else's car in the driveway at AGUILAR's house early on a Sunday morning. He had texted AGUILAR three times since he broke up with her on March 29th, telling her that he was thinking of her and that he loved her (te amo). He went to the music concert as they had planned on April 4th, but AGUILAR did not appear. Nor did AGUILAR respond to any of his three texts. As LOPEZ stated, their usual pattern was to break up and get back together, and this time AGUILAR did not respond to his communications.
13. LOPEZ was upset when he realized that MARKS was at AGUILAR's house early on a Sunday morning. He got out of his car, and left his MDC open on the front passenger seat, with his LEADS search of MARKS' SUV still visible on the computer screen, and walked up to AGUILAR's house. LOPEZ took his cell

phone with him; he did not leave it in the car. As LOPEZ reached the house, he did not hear any noise, and there was, in fact, no noise coming from inside the residence.

14. LOPEZ attempted to open the side door to the house adjacent to the side driveway. He did not have a key to her house on April 6th. Although he had temporarily been given a key to the house by AGUILAR, she had taken it back before the April 6th incident. The storm door on the side was locked, and the inner door was locked, and also barricaded from the inside with a two by four, although there were no windows on the door, so the two by four could not be seen from the outside. No photographs were introduced into evidence showing either the storm door or the interior side door as seen from outside the house.
15. While AGUILAR's wooden interior side door, like all used doors, may not have been completely free of small marks and scratches on the door and strike plate, there was no obvious damage to the door on the morning of April 6th to reasonably suggest to anyone that a break-in had just occurred or that the door had been kicked in. When questioned, LOPEZ said that the door around the knob looked damaged. AGUILAR said the door had been repaired, and that there was no damage to the door, and that the door could not be seen when the outer storm door was locked. DECOOK also said that she inspected the interior wood side door after the storm door was unlocked and noticed no damage to the interior wood door. Moreover, AGUILAR and LOPEZ both stated that she never told LOPEZ about her April 3rd break-in, and he would, therefore, have no reason to know about it.

16. When LOPEZ was unable to open the storm door or interior door on the side of the house, LOPEZ went to the back of the house to try to make entry, knowing there was a sliding door in the back, but was not successful. Just as with the side door to the house, AGUILAR's rear sliding door, like all used doors, may not have been completely free of small marks and scratches, but there was no damage to the door on the morning of April 6th to reasonably suggest to anyone that a break-in had just occurred at the back sliding door or that the door had been forcibly entered. AGUILAR testified that there had been a powdery residue left on the bottom of the rear sliding door when something had been thrown at it, but that she was able to wash it off. Both AGUILAR and DECOOK said there was no damage to the door. No photographs were introduced into evidence showing either the rear sliding door as seen from outside the house.
17. That morning, LOPEZ could see through the blinds that were hung on the rear sliding door, and could see into the dining area and hallway, and could also see part of AGUILAR's bedroom and her bed, as her door was partly opened when LOPEZ was standing at the back of the house look in. LOPEZ did not see MARKS at this time as he was still in bed. Both MARKS and AGUILAR testified that at the time the noise was heard at the door on the side of the house, and also when LOPEZ went around to the back of the house, MARKS was in the bedroom on the side of the bed closest to the wall. AGUILAR stepped outside of the bedroom and was visible to LOPEZ; but MARKS was not.

18. AGUILAR yelled to LOPEZ to go away, then closed the bedroom door. Both AGUILAR and MARKS then yelled to LOPEZ to go away and that there were two police officers present. LOPEZ heard this.
19. LOPEZ knew or believed that AGUILAR was inside the house, as he testified that he heard her screaming to “go away.” Moreover, he clearly knew both AGUILAR and MARKS were in the house because he testified that he was justified in shooting to enter because he was allegedly worried that an unknown black man named MARKS who owned an SUV was doing something bad to AGUILAR inside the house.
20. LOPEZ knew that AGUILAR lived in the house with her two children, and since he had not spoken to her since March 29, 2014, had no reason to believe they were not home on April 6th.
21. LOPEZ fired six bullets while standing on the rear deck of the house as there were six fired 40 caliber cartridge casings on the rear deck of the house. There were also metal fragments from the bullets found, not embedded, but laying along the bottom track of the rear sliding door that led into the house. LOPEZ fired two bullets into the window of the sliding door first, attempting to make entry into the house. There were two holes in the window of the sliding door. LOPEZ then shot four more bullets into the window just south of the door that looked into the dining room and hallway of the interior of the house. This window had been shattered and broken inwards. One of these fired bullets was found in the kitchen sink and a second fired bullet was found on the west side of the dining table that had gone through a tablecloth and into the table. A third fired bullet was found in

the wall next to the trash can and the fourth fired bullet was found on the floor of the closet, both of which were located in the hallway leading to and adjacent to AGUILAR's bedroom. The bedroom is right off the hallway, and just beyond the dining room, and, part of AGUILAR's bedroom is visible from the outside when looking through the window and back sliding door into the house. There was shattered and broken glass all over the floor in the kitchen/dining area and also leading partially into the hallway. On the morning of April 6th, the blinds hanging on the window overlooking the dining room were completely closed and LOPEZ could not see into the house when he shot the four bullets.

22. While LOPEZ was shooting four bullets through the window, AGUILAR and MARKS were inside the bedroom with the door partially open. LOPEZ entered the house through the window. AGUILAR heard the noise coming from the back, and realized the crackling noise she had heard to be gunshots. She then heard her blinds moving, and sat up on her bed and looked out her bedroom door, and then saw LOPEZ, who had come through window. As LOPEZ came in through the window, AGUILAR yelled from the bedroom for LOPEZ to go away and that there were two police officers in here. MARKS also yelled for LOPEZ to go. She slammed the bedroom door that had been ajar, and said to MARKS, "It's Juan. It's Juan." She then started looking for her gun for self-protection and cell phone to call the police

23. LOPEZ entered the bedroom with his loaded gun in his hand, and moved towards MARKS, pointing his gun at MARKS, causing MARKS to be in fear of his life and drop to his knees. AGUILAR also feared for her life when LOPEZ entered

the bedroom with his gun, as he was very angry. MARKS raised both of his hands and said, "don't shoot." LOPEZ asked MARKS, "I can't believe you're doing this to me. We are still together?" AGUILAR moved in front of MARKS to try to block LOPEZ from hurting MARKS, and told LOPEZ he had to leave.

LOPEZ was angry and upset that MARKS was there, because he thought AGUILAR and MARKS had been intimate. LOPEZ told MARKS that he had to leave, but AGUILAR told LOPEZ that MARKS was not leaving and that MARKS did not do anything to him, that he had broken up with AGUILAR, and he had to leave her house." LOPEZ became angrier and then touched or grabbed AGUILAR on the side of the neck, and pushed her, in order to get her to move from in front of MARKS. When LOPEZ pushed her, AGUILAR fell to the ground and bruised her leg, thigh, arm and back. AGUILAR then got up off the floor, and LOPEZ again told MARKS to leave. LOPEZ lowered his gun.

24. AGUILAR and MARKS had been in their underwear, but got dressed. LOPEZ took a picture with his cell phone and all three moved out of the bedroom into the living room. MARKS retrieved his gun from the living room, which was holstered, but not locked in a cabinet.

25. MARKS refused to leave unless LOPEZ left with him. LOPEZ put his gun in his pocket. LOPEZ and MARKS walked out to the driveway, when LOPEZ asked MARKS if he had slept with AGUILAR. After numerous attempts, MARKS finally got LOPEZ to put his gun in the trunk of his car. LOPEZ said he was going to leave, but MARKS convinced him to stay and wait for the police, who had already been called by someone unknown.

26. LOPEZ called JIMENEZ while seated in his car and was distraught and crying. LOPEZ told JIMENEZ that he had confronted his girlfriend with another man inside the house, and that he was sitting inside his car, and had put his firearm in his trunk. JIMENEZ told LOPEZ not to do anything and to stay in the car, and that he would be there in a couple of minutes.
27. CPD officers arrived on the scene, and were in charge of the investigation. ISP officers also arrived, but were there only to assist as needed. JIMENEZ also arrived.
28. LOPEZ was placed in the CPD squad car, where he repeatedly tried to telephone AGUILAR, but she did not answer. LOPEZ also texted AGUILAR from inside the squad car, "that he was sorry".
29. AGUILAR, MARKS and LOPEZ all went to the CPD station. For unknown reasons, there were no charges filed on April 6, 2014, although MARKS and AGUILAR had assumed LOPEZ would be charged. Two days later, MARKS was called back to the CPD station and gave the detective a narrative statement about the incident that he had written out for CPD and reiterated that he wanted to press charges against LOPEZ. LOPEZ was charged approximately one year later.
30. AGUILAR, MARKS, and LOPEZ all testified at the Order of Protection hearing, where, the judge granted AGUILAR and her children an interim and then plenary Order of Protection. In July, 2015, the Judge in that court ordered LOPEZ to pay restitution for the damage he did to AGUILAR's house. LOPEZ paid her the restitution.

31. On August 31, 2016, LOPEZ met with ISP officers, including JIPSON, and had an ISP administrative interview regarding the April 6th incident. The transcript of the administrative hearing was not admitted into evidence, and no officer testified about the contents of the interview. LOPEZ admitted that at the administrative hearing he had answered “no” when he was asked whether he had grabbed Special Agent Aguilar by her neck and pushed her.
32. ISP Sgt. Ogarek ran a LEADS check and determined that LOPEZ had initiated a LEADS inquiry on April 6, 2014, at approximately 8:41 and 53 seconds a.m. (193) LOPEZ had run license plate #233460, that came back to Marks, Jr., Lee H., with a VIN number and an address of 809 South 20th Street, in Murphysboro, Illinois.
33. In July, 2015, LOPEZ was charged in the Cook County Criminal Court with home invasion/firearm, a felony, home invasion involving the discharge of a firearm, a felony, aggravated discharge of a firearm, a felony, reckless discharge of a firearm, a felony, and reckless conduct, a misdemeanor.
34. On June 22, 2016, the criminal bench trial was heard by Judge James Linn, who found LOPEZ guilty of reckless conduct, and not guilty of the remaining charges.
35. On December 22, 2016, the Complaint in this matter was filed by ISP.

FINDINGS AND RECOMMENDATIONS PERTAINING TO THE COMPLAINT

1. Count I alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1 (hereinafter referred to as Rule 1). Rule 1 states,

“Officers uphold the Constitutions of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction”.

Count I alleges that LOPEZ violated Rule 1 when he committed the offense of Aggravated Discharge of a Firearm, in violation of 720 ILCS 5/24-1.2 (a)(1), a Class 1 Felony, when he knowingly discharged his firearm into the sliding glass door and south window of AGUILAR’s residence, which he knew to be occupied, from a place outside that residence.

In Illinois, Aggravated Discharge of a Firearm, 720 ILCS 5/24-1.2, in paragraph (a)(1), states, “A person commits aggravated discharge of a firearm when he or she knowingly or intentionally: (1) Discharges a firearm at or into a building he or she knows or reasonably should know to be occupied and the firearm is discharged from a place or position outside that building.

In this case, the facts are undisputed that LOPEZ intentionally fired his gun a total of six times from outside the house he knew to be AGUILAR’s residence, through the glass door and glass window, into the house while AGUILAR and MARKS were inside the house. What is disputed is only whether LOPEZ, as an ISP trooper, was legally justified in firing those shots, in order to gain entry to protect AGUILAR from harm.

DID LOPEZ USE JUSTIFIABLE USE OF FORCE

In Illinois, the defense set forth in 720 ILCS Sec. 7-1(a) Use of force in defense of person states:

“(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony”.

There is also an ISP Directive regarding the use of deadly force and the discharge of a weapon. LOPEZ agreed that he used deadly force on April 6, 2014. JOHNSON stated that troopers are required to take police action if they believe they are witnessing a crime, whether they are on duty or off duty, but that an officer can use deadly force while off duty only in the face of an imminent threat. JOHNSON said the Directive on the use of deadly force applies to ISP officer who are witnesses in the same way it applies to officer non-witnesses. JOHNSON stated that LOPEZ violated the ISP Directive on use of deadly force as well as the ISP Directive on use of force, other than deadly force. She said the Directives require the officer to consider several factors before using force with a weapon, or force of any kind. JOHNSON said the officer should consider the threat to himself or to another by the subject, consider the subject's ability and opportunity to inflict great bodily harm, consider the size of the people involved, whether the subject is under the influence of a substance, and consider the probability that there will be

great bodily harm or death to the officer or another if the subject is not arrested or controlled immediately.

LOPEZ asserted that he was justified in using deadly force on April 6th, because he thought a crime was occurring and that there might be harm to AGUILAR.

LOPEZ testified that he arrived at AGUILAR's house sometime after 7:00 a.m. on Sunday morning and believed a crime was occurring because of the following observations: 1) AGUILAR's two cars were parked on the driveway, instead of their usual location in the garage, and an unfamiliar SUV registered to someone he did not know was parked behind it on the driveway; 2) the storm door on the side of AGUILAR's house was locked, instead of unlocked as usual; 3) there was some damage to the interior wooden side door behind the locked storm door; 4) the back sliding glass door had unspecified damage; and, 5) he peered through the blinds and saw an unknown black male in AGUILAR's bedroom, and then the man closed the bedroom door.

LOPEZ testified at the disciplinary hearing that he had gone to AGUILAR's house on April 6th to pick up his belongings, but at the order of protection hearing, he said that even though they had broken up, he went to AGUILAR's house to take her to church, and also to have her help him with his ISP reports. LOPEZ said that when he saw the three cars in the driveway, he decided that the SUV was blocking AGUILAR's two personal cars. LOPEZ decided that this was "weird" to him, and "out of the normal," and thought that a crime was going on since it did not make sense to him. LOPEZ ran the plate of the SUV, which came back to Lee Marks, who lived outside the area and was unknown to

LOPEZ. He thought, "that's even more weird." He said that he did not care if AGUILAR was "hooking up" with someone, and that he did not run the plate because he was jealous, but because he was a police officer, and was aware of potential crimes. LOPEZ denied having met MARKS, talking to him or having a drink with him, prior to April 6, 2014.

The Hearing Officer finds that LOPEZ had met MARKS before on at least three occasions, and that he had jealously thrown and then replaced AGUILAR's cell phone when he had seen MARKS' name and text message call on her phone in 2011.

Therefore, it is not believable that LOPEZ ran the license plate and did not recognize the name of Lee Marks. It is also not believable that LOPEZ thought that MARKS' SUV being present that morning was evidence that a crime was occurring. Moreover, if LOPEZ really arrived at the house sometime after 7:00 a.m., as he stated, and the evidence shows that CPD was not called until just before 9:00 a.m., this would be a sign that LOPEZ sat outside AGUILAR's house for quite a while before trying to gain entry, which is an additional indication that he did not believe a crime was occurring.

Furthermore, this was early Sunday morning. LOPEZ was, or should have been aware that AGUILAR might have gone out on Saturday night, and that the car parked in the driveway was really evidence that an invited guest she had gone out with the night before had stayed overnight.

Even if one believed that LOPEZ went to the house to pick up his things and made observations that led him to believe a crime was occurring, one has to ask if LOPEZ beliefs were reasonable. LOPEZ said that when he saw an older SUV that he had never

seen before, behind AGUILAR's cars in the driveway LOPEZ thought the SUV was blocking the other cars. LOPEZ decided that this was "weird" to him, and "out of the normal," and thought that a crime was going on since it did not make sense to him. However, a strange car in the driveway parked behind AGUILAR's car is not necessarily a sign that a crime is occurring inside the house. It can be a sign that there is a visitor at AGUILAR's house. Moreover, since one can guess that most criminals do not park in the driveway for everyone to see, it is unreasonable for LOPEZ to believe this is a sign of criminal activity. In addition, at the point at which LOPEZ made his first observation that there was an SUV in the driveway, there was no sign of any imminent criminal activity, and LOPEZ had plenty of time to call the CPD if he was really worried. LOPEZ said that he did not believe the CPD is needed, since he was an ISP officer. However, this is also unreasonable since, as JIPSON testified, ISP officers are trained to notify a local agency for back-up, especially if one is alone and off-duty.

LOPEZ said he used his MDC to run the license plate of the SUV and, because it came back to the name of Lee Marks, who lived outside the area and was unknown to him, LOPEZ believed this was further evidence that a crime was occurring. LOPEZ testified that he thought, "that's even more weird." He said that he did not care if AGUILAR was "hooking up" with someone, and that he did not run the plate because he was jealous, but because he was a police officer, and was aware of potential crimes. Even if one were to believe LOPEZ when he said that he did not know or recognize the name Lee Marks, the hearing officer also finds that it was unreasonable for LOPEZ to believe this was any kind of basis to believe a crime was occurring. As stated above, even if one were to

believe that LOPEZ told the truth, he was unreasonable to believe an imminent crime was occurring inside the house just because an unknown car registered to an unknown individual is parked in the driveway.

LOPEZ next said he believed an imminent crime was occurring because when he tried to open the side storm door, he found it was locked from the inside, which LOPEZ felt was unusual since it had never been locked in two and a half years. He said he saw what he thought was damage on the interior door, and he could see that the doorknob area was completely damaged, even though the door was closed. He decided that someone had broken into the house and said his “alert level” went, “all the way to the top.” He said he started thinking like a police officer and wondered if someone was in there, and whether AGUILAR was being harmed. However, even if LOPEZ thought there was some damage on the side door, and even if LOPEZ believed he left his phone in his car, he had ample time to go back to the car and get his phone and call AGUILAR and also call CPD for backup. He also could have knocked on the door or window before jumping to conclusions. LOPEZ’ actions were unreasonable and since he did not call CPD, or knock on the door or call AGUILAR, it does not support his claim that he was truly worried about any crime being committed.

After deciding that someone had broken in, LOPEZ said he started to investigate, as trained, by walking towards the back of the house, to the sliding door and window. LOPEZ said he did not believe he needed to call 911, because he was a trained police officer and he knew how to act. LOPEZ also said that the reason he did not call police

was because he left his phone in the car. MARKS said this was untrue, as LOPEZ pulled out his phone and took a photograph of MARKS and AGUILAR later, after he had entered the house and was in the bedroom.

LOPEZ said that when he got to the back door he noticed scratches on the glass of the sliding door and wondered whether someone had kicked it. AGUILAR said there was no damage to the glass of the sliding door. Even if one were to believe LOPEZ was telling the truth and thought there were scratches on the door, there was insufficient evidence to suggest that anyone had broken into the back door or kicked the door in, and it was unreasonable for him to assume this. The door was locked, and the blinds were drawn on a Sunday morning. Again, LOPEZ did not knock on the door or call AGUILAR or call CPD, the first things he would have done if he was really worried about AGUILAR. Instead LOPEZ peered in the window to see who was there with AGUILAR. This is more consistent with the behavior of an agitated, angry, jealous ex-boyfriend, and not consistent with an off-duty officer who is worried that a crime is being committed.

Through the glass of the sliding door LOPEZ could see into the kitchen, dining room, the hallway, and part of the bedroom. AGUILAR was on the side of the bed closest to the door and MARKS was on the side of the bed near the wall, and not visible from the back door. If LOPEZ saw anyone when he peered in through the back door, LOPEZ saw AGUILAR, and not MARKS. AGUILAR testified that she heard noise and looked outside the bedroom, saw LOPEZ, and closed the door. LOPEZ never saw "a black man just standing there and within seconds the door was slammed." The evidence showed that

not only did LOPEZ know who MARKS was prior to April 6th, but MARKS did not get up from the bed until after LOPEZ shot through the door and window. LOPEZ said he then heard screaming from the back deck, and “that’s when I knew something was going on.” LOPEZ said he heard AGUILAR yelling “to get out of here”, but somehow decided the words were not directed to him. If LOPEZ could hear AGUILAR say, “Get out of here,” he could also hear her and MARKS say, “There are two police officers in here” and, “Juan, go home.” AGUILAR and MARKS testified that neither one of them yelled until after the shots had been fired and LOPEZ was entering the house. Even if one believes LOPEZ when he said he heard screaming and then decided that AGUILAR was being raped, murdered or hurt, the evidence does not support this leap of conclusion. Furthermore, there is no basis to believe that there was any noise coming from AGUILAR’s house on that Sunday morning. The testimony is clear that AGUILAR and MARKS were sleeping up until LOPEZ’ arrival at the house, The noise started when LOPEZ tried to enter the house through first, the side door, and then by shooting six bullets into the back door and back window. Furthermore, LOPEZ’ claim that he could hear screaming outside the house which caused him to worry about AGUILAR is not supported by the evidence inasmuch as even LOPEZ states that after he entered the bedroom, there was no noise or criminal activity going on.

LOPEZ said he decided to make entrance, and pulled out his weapon and aimed down, toward the bottom of the glass sliding door. LOPEZ agreed he was using deadly force when he discharged his firearm, but said he tried to avoid hitting anyone by pointing his weapon down. However, one bullet hit the dining room table, one hit the wall across the

room next to the hall, one landed in the kitchen sink, and the fourth hit a closet floor.

LOPEZ said the window was covered with blinds on the interior and he could not see into the house through the window, but he could through the sliding door. However, he shot four bullets through that same window that he could not see behind. Glass shrapnel was all over the floor of the kitchen, dining room and hallway. LOPEZ himself admits that he did not announce himself until after shooting six bullets, shattering the glass of the window, and entering the residence.

LOPEZ said he walked toward the bedroom with his gun at "low ready", meaning that he held it with two hands facing downward, as he was trained to do. LOPEZ said that once he walked in, he figured out that the situation was not as he had thought. He said he didn't see anyone being beaten or hurt, so he then put his gun back in its holster.

However, both AGUILAR and MARKS said LOPEZ entered the bedroom with his gun pointed at MARKS. Both AGUILAR and MARKS said they were worried LOPEZ was going to harm them, as he was the one with his gun out and pointed. MARKS raised his hands in the air, and begged LOPEZ not to shoot. LOPEZ said he never noticed if MARKS was on his knees with his hands in the air. AGUILAR rushed in front of MARKS to stop LOPEZ from hurting MARKS and begged him not to shoot. Lopez grabbed her or pushed her in the neck area, and she fell to the ground and suffered some bruises.

LOPEZ said he was acting in his ISP officer role, and not as an ex-boyfriend who was upset to find AGUILAR with another man. However, as stated above, even if LOPEZ

was to be believed that he was acting as a police officer that morning, he was still not thinking or behaving reasonably when he jumped to the conclusion that a crime was occurring inside the house or was imminent. He was not reasonable when he assumed that harm was being caused to AGUILAR, and that he was justified in shooting six bullets into the house to gain entry. As stated above, whether on duty or off duty, ISP troopers are required to take police action only if they reasonably believe they are witnessing a crime, and can only use deadly force while off duty in the face of an imminent threat. Not only was LOPEZ not witnessing a crime occur or about to occur, but there was clearly no such imminent threat posed to AGUILAR, and, therefore, no justifiable reason to use force of any kind, and especially not deadly force. LOPEZ cannot shoot six times to enter a house where he only imagines something bad is happening.

LOPEZ denied ever acting out of jealousy or anger or malice that morning. The evidence simply does not support this. The only logical conclusion that can be made is that LOPEZ knew or suspected that AGUILAR was in the house with MARKS, and LOPEZ became very jealous and angry. LOPEZ used the alleged strange car in the driveway, damage to the door, strange black man in the bedroom, and screaming as a pretext to justify his anger and his loss of control when he shot six bullets into the house.

For these reasons, the Hearing Officer finds that LOPEZ was not acting with legal justification when he discharged his firearm from a position standing outside of AGUILAR's residence, and intentionally shot six bullets into the sliding glass door and through the glass window and into AGUILAR's home when he knew or should have

known that the house was occupied by AGUILAR and MARKS. The Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Aggravated Discharge of a Firearm, 720 ILCS 5/24-1.2(a)(1), in violation of Count I, and in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.

2. Count II alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1 (hereinafter referred to as Rule 1). Rule 1 states, "Officers uphold the Constitutions of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction".

Count II alleges that LOPEZ violated Rule 1 when he committed the offense of Reckless Discharge of a Firearm, in violation of 720 ILCS 5/24-1.5 (a), a Class 4 Felony, when he discharged his firearm in a reckless manner into the sliding glass door and south window of AGUILAR's residence, which endangered the bodily safety of an individual.

A person commits reckless discharge of a firearm by discharging a firearm in a reckless manner which endangers the bodily safety of an individual. Therefore, the offense is two-pronged. A person commits the offense of reckless discharge of a firearm when he (1) recklessly discharges a firearm, and (2) endangers the bodily safety of an individual.

Recklessness is defined in 720 ILCS 5/4-6 as follows:

"A person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow,

described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation. An act performed recklessly is performed wantonly, within the meaning of a statute using the term “wantonly”, unless the statute clearly requires another meaning.”

720 ILCS 5/4-6

As stated at length above in Count I, whether on duty or off duty, ISP troopers are required to take police action only if they believe they are witnessing a crime, and can only use deadly force while off duty in the face of an imminent threat. Not only was LOPEZ not witnessing a crime occur or about to occur, but there was clearly no such imminent threat posed to AGUILAR, and, therefore, no justifiable reason to use force of any kind, and especially not deadly force. LOPEZ was not acting reasonably when he shot six bullets through the door and window into AGUILAR’s house to gain entry. He certainly deviated from the standard of care that a reasonable person would exercise when he shot four times through the window when the blinds on the window were closed and he was unable to see on the other side of that window and he knew at least two people were present in the house. There was clearly a substantial and unjustifiable risk that either one of those two people would come out of the bedroom and get hit by a bullet, and LOPEZ would not be able to see because the blinds were closed. LOPEZ said he shot downward so no one would be hurt, but the bullets in the dining table, kitchen sink, and closet and wall state otherwise. These bullets were not found on the ground, close to the window, which is where they would have been if LOPEZ were to be

believed. Therefore, LOPEZ recklessly discharged his weapon, satisfying the first prong necessary to show reckless discharge of a firearm.

In order to show that someone's reckless discharge of a firearm satisfies the second prong of the offense and endangers the bodily safety of an individual, the courts have found that it is not necessary that the victim was "actually endangered." In the case of People v. Collins, 214 Ill.2d 206 (2005), the Court held that the offense of reckless discharge of a firearm does not require the firearm to be fired in the direction of someone. Neither does it require the gun to have to be pointed or angled towards an individual to satisfy the endangerment element of the statute. What is required is that the evidence demonstrates that the defendant's reckless conduct created a dangerous situation, such that an individual was in peril of probable harm or loss. In the Collins case, the defendant fired his gun up into the air while he was standing outside, and the Court found that two women located in the house, and two officers standing 25-30 feet away from the defendant were sufficiently endangered by the defendant's reckless conduct. The Collins court held that the person who shoots the firearm need not even be aware that others are present to be convicted if those individuals are endangered.

In this case, LOPEZ knew that MARKS and AGUILAR were in the bedroom, and quite close to where LOPEZ was standing when he fired his weapon. In addition, the bedroom was visible to LOPEZ when he was looking into the house from the glass sliding door. Even then, LOPEZ shot twice into the sliding door. LOPEZ then fired his gun four more times into the house through the back window that was covered by blinds, towards the

general vicinity of the dining area, kitchen, hallway, closet and the bedroom where AGUILAR and MARKS were located. It is easy to image that either AGUILAR or MARKS or both of them could have come out of the bedroom to see what the noise was; in fact, this was a substantial risk. LOPEZ could not see through the window since it was completely covered by blinds. AGUILAR and MARKS could have been killed by a stray bullet or hurt by flying glass. AGUILAR and MARKS could also have been hurt by glass laying on the floor. Clearly, LOPEZ' reckless conduct created a very dangerous situation that endangered both MARKS and AGUILAR when he discharged his firearm six times into AGUILAR's house through the back window and door.

For these reasons, and for all of the reasons stated above in the discussion of Count I, the Hearing Officer finds that LOPEZ was not acting with legal justification when he recklessly discharged his firearm from a position standing outside of AGUILAR's residence, and shot six bullets into the sliding glass door and through the glass window covered with blinds and into AGUILAR's home. LOPEZ even knew that the house was occupied by AGUILAR and MARKS, and he still shot six bullets into the door and through the window of house. The Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Reckless Discharge of a Firearm, 720 ILCS 5/24-1.5(a)(1), in violation of Count II, and in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.

3. Count III alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1 (hereinafter referred to as Rule 1). Rule 1 states, "Officers

uphold the Constitutions of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction”.

Count III alleges that LOPEZ violated Rule 1 when he committed the offense of Home Invasion/Firearm, in violation of 720 ILCS 5/19-6(a)(3), a Class X Felony, when he, without authority, knowingly entered AGUILAR’s dwelling place, when he knew one or more persons was present, and while armed with a firearm, used force or threatened imminent use of force upon a person within the dwelling place.

720 ILCS 5/19-6 The Home Invasion statute provides:

"(a) A person who is not a peace officer acting in the line of duty commits home invasion when without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present and;

(1) while armed with a dangerous weapon uses force or threatens the imminent use of force upon any person or persons within such dwelling place whether or not injury occurs, or

(2) intentionally causes any injury to any person or persons within such dwelling place, or

(3) While armed with a firearm uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs, or

(4) Uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs and during the commission of the offense personally discharges a firearm...”

LOPEZ is charged with a violation of 5/19-6(a)(3) above, which requires that he have not acted in the line of duty, and also requires that he was armed with a firearm and used force or threatened the imminent use of force upon MARKS and/or AGUILAR within her home. In the instant case, as stated above, the Hearing Officer has found that LOPEZ was off duty, but acting personally and not acting as a police officer, so he was not acting in the line of duty. As stated by JOHNSON, whether on duty or off duty, ISP troopers are required to take police action only if they believe they are witnessing a crime, and can only use deadly force while off duty in the face of an imminent threat. Not only was LOPEZ not witnessing a crime occur or about to occur, but there was clearly no such imminent threat posed to AGUILAR, and, therefore, no justifiable reason to use force of any kind, and especially not deadly force. LOPEZ was not acting reasonably and was not legally justified when he shot six bullets through the door and window into AGUILAR's house to gain entry. He was also not legally justified to enter AGUILAR's bedroom with his gun drawn and pointed at MARKS and AGUILAR.

Even if one were to believe LOPEZ when he says his gun was pointed down, the Hearing Officer has found that his entry into AGUILAR's home was uninvited and unauthorized as no evidence of a crime or imminent harm were occurring. Therefore, when LOPEZ entered the bedroom with a gun drawn and in both of his hands, it satisfied the

requirements set forth in the home invasion statute, 720 ILCS 5/19-6(a)(3) above. In the case of People v. Kovacs, 481 N.E. 2d 1071 (1985), the Defendant had argued that she should not have been convicted of home invasion because, even though she was not authorized to enter the home, she only held her knife, and did not verbally threaten anyone or actually use her knife once she entered the home. In the Kovacs case, the defendant while armed with a knife, forcibly cut through a screen and broke a glass window and, while doing so, although prior to actual entry, pointed the knife at the victim and stated that she was coming in to get her baby. Defendant did enter through the broken window still holding the knife in her hand. The court held that the threats directed to the victim both verbally and by gesture with the knife immediately prior to entry of the dwelling were sufficient to meet the requirement of the home invasion statute. The court further reasoned that the defendant's conduct thereafter in entering the house through the window with the knife in hand also constituted a clear threat to the persons therein. The Court said this was sufficient to uphold his conviction for home invasion, and held that it was not necessary that the defendant also make explicit verbal threats after she has entered the dwelling, still holding the knife, in order to meet the requirements of the home invasion statute. The Court held that when the defendant entered the dwelling of another without authority, knowing it was occupied by another person, and the defendant was still armed with a dangerous weapon, this was sufficient to meet the elements of the home invasion statute.

For these reasons, the Hearing Officer finds that LOPEZ was not acting with legal justification when he discharged his firearm from a position standing outside of

AGUILAR's residence, and shot six bullets into the sliding glass door and window and into AGUILAR's home in order to gain entry. The Hearing Officer also finds that LOPEZ knew that the house was occupied by AGUILAR and MARKS as he had heard and seen them, and that he then entered the bedroom with his gun drawn and in both of his hands, and pointed the gun at MARKS and AGUILAR, thereby threatening them with the imminent use of force. The Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Home Invasion/Firearm, 720 ILCS 5/19-6(a)(3), in violation of Count III, and in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.

4. Count IV alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1 (hereinafter referred to as Rule 1). Rule 1 states, "Officers uphold the Constitutions of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction".

Count IV alleges that LOPEZ violated Rule 1 when he committed the offense of Home Invasion/Discharge Firearm, in violation of 720 ILCS 5/19-6(a)(4), a Class X Felony, when he, without authority, knowingly entered AGUILAR's dwelling place, when he knew one or more persons was present, and while armed with a firearm, and used force or threatened the imminent use of force upon a person within the dwelling place, and personally discharged a firearm.

As stated above in Count III, the Hearing Officer has found that LOPEZ committed the offense of Home Invasion/ Discharge Firearm. In this Count IV, LOPEZ is charged with a violation of 5/19-6(a)(4) above, which requires that he have not acted in the line of duty, and also requires that he “(4) Uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs and during the commission of the offense personally discharges a firearm.” In this Count, the question is whether LOPEZ’ discharge of his firearm while standing outside AGUILAR’s home, and using the firearm to shoot out her window and gain entry to the home, satisfies the requirements of subparagraph (4) of the home invasion statute.

In the People v. Kovacs case, 481 N.E.2d 1071, discussed above, the defendant did not discharge a gun, and maintained that he should not have been convicted because he threatened the occupant of the house while the defendant was standing outside on the porch, rather than inside the home. The defendant argued that the home invasion statute requires that the unlawful entry of the dwelling place must occur first and then there must be a threat of force against a person while inside the dwelling place. The Kovacs court held that the offense of home invasion is comprised of acts and conduct of a defendant both within and without the dwelling place sought to be protected by the statute and it does not require that the threat of force against persons within a dwelling may only occur after the unlawful entry. The Court said the home invasion statute was intended to include the home invader who threatens the occupant or uses a gun while standing on the porch, and thereby gains entry to the dwelling.

In this case, LOPEZ discharged his firearm while standing on AGUILAR's back deck, in order to achieve his unlawful entry into the home. As held by the Kovacs court, the home invasion statute was intended to protect AGUILAR in her home, which includes her back deck. Therefore, when LOPEZ shot six bullets into AGUILAR's back door and back window in order to gain entry into the home, the additional requirements set forth in 720 ILCS 5/19-6(a)(4) were satisfied.

For these reasons, and as stated above, the Hearing Officer finds that LOPEZ was not acting within the line of duty or with legal justification. Therefore, the Hearing Officer also finds that when LOPEZ discharged his firearm from a position standing outside of AGUILAR's residence, and then shot six bullets into the sliding glass door and window of AGUILAR's home in order to gain entry, and then climbed through the broken window, knowing the house was occupied by AGUILAR and MARKS, and then entered the bedroom with his gun drawn and in both of his hands, and pointed the gun at MARKS and AGUILAR, thereby threatening them with the imminent use of force, LOPEZ violated the home invasion statute, 720 ILCS 5/19-6(a)(4). The Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Home Invasion/Discharge, 720 ILCS 5/19-6(a)(4), in violation of Count IV, and in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.

5. Count V alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1 (hereinafter referred to as Rule 1). Rule 1 states, "Officers uphold the Constitutions of the United States and the State of Illinois, obey all federal,

state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction”.

Count V alleges that LOPEZ violated Rule 1 when he committed the offense of Reckless Conduct, in violation of 720 ILCS 5/12-5, a Class A Misdemeanor, in that he recklessly discharged his firearm into the sliding glass door and window of AGUILAR’s residence, endangering the bodily safety of another person.

As discussed above in Count II, the Hearing Officer finds that LOPEZ acted recklessly.

Even if one were to believe all of LOPEZ stated reasons for shooting his weapon into the house, he was not justified to use deadly force. LOPEZ did not witness a crime occur or about to occur, and he was unreasonable to jump to such a conclusion. There was certainly no imminent threat posed to AGUILAR, and, therefore, no justifiable reason to use force of any kind, and especially not deadly force. LOPEZ was not acting reasonably when he shot two bullets into the door and four bullets through the window into AGUILAR’s house to gain entry. He certainly deviated from the standard of care that a reasonable officer or reasonable person would exercise when he shot four times through the window when the blinds on the window were closed and he was unable to see on the other side of that window and he knew at least two people were present in the house. The Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Reckless Conduct, a Class A Misdemeanor, in violation of 720 ILCS 5/12-5,

6. Count VI alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.2 (hereinafter referred to as Rule 2). Rule 2 states, "If an officer enters a guilty plea, nolo contendere, stipulates to the facts or is found guilty of a violation of any law, or there is any other judicial determination that will support any punitive measure taken against the officer, such action by the officer or judicial entity will be prima facie evidence of a violation of this directive. Count VI alleges that LOPEZ violated this rule when, on June 22, 2016, he was found guilty of Reckless Conduct in Criminal Court.

As Rule 2 states, and also stated by JOHNSON, a determination of guilt in criminal court is prima facie evidence of non-conformance to ISP laws. The Hearing Officer finds that LOPEZ is guilty of this Count VI and violated Rule 2, in that LOPEZ was found guilty of Reckless Conduct, a Class A Misdemeanor, in violation of 720 ILCS 5/12-5, on June 22, 2016, after a trial by Circuit Court Judge Linn.

7. Count VII alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.41.c (hereinafter referred to as Rule 41). Rule 41 states, "Officers are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer is the subject of the investigation and has been advised of his/her statutory administrative proceedings rights if the allegation indicates that a recommendation for demotion, suspension of more than 15 days or discharge from the Department is probable. Count VII alleges that LOPEZ violated Rule 41 on August 31, 2016, when he

failed to truthfully answer questions during the Department personnel investigation of LOPEZ, when he falsely described the condition of the side door to AGUILAR's home just prior to his April 6, 2014, entry into the home and he falsely denied grabbing AGUILAR by the neck and pushing her to the ground on the same day.

JOHNSON said that she believed LOPEZ made a false statement about the condition of the side door when he said in his administrative interview that the door looked like it had been kicked in, but JOHNSON said she did not personally go to the scene of AGUILAR's residence and did not personally talk to DECOOK. JOHNSON also said she believed LOPEZ lied in the administrative interview about grabbing AGUILAR around the neck after she read in the case file that AGUILAR and MARKS had alleged this in their interviews, and she read that AGUILAR had bruising.

There were no photos introduced into evidence showing either the outside of the side wooden interior door, or the rear glass sliding door. The transcript of the administrative interview was not admitted into evidence. There was also no testimony given by JIPSON about the administrative interview of LOPEZ on August 31, 2016, even though she was present for the interview, and could have presented all of the specific questions asked and answers given by LOPEZ at the administrative interview. Therefore, it is not known to this Hearing Officer the words used by LOPEZ to answer the questions put to him about the condition of the side door. Although, AGUILAR said there was no damage to the side door, as her brother had already repaired it, and DECOOK said she did not see any damage on the door, it is impossible to say, without additional evidence, that there were

no small marks or scratches or damage of any kind on the side door. It is also impossible to know if LOPEZ qualified his answers given during the interview, such as stating, “I think...” or “appeared to me...” etc.

There were photos showing bruising on AGUILAR’s leg, which she said was caused by LOPEZ either pushing or grabbing her by the neck, which caused her to fall. MARKS said LOPEZ grabbed AGUILAR by the neck and caused her to fall. Although the Hearing Officer finds that AGUILAR was indeed bruised as a result of being pushed or grabbed by LOPEZ, and falling to the ground, there was insufficient evidence to show LOPEZ lied at his administrative hearing. The transcript of the administrative interview was not admitted into evidence. In addition, JIPSON did not testify about the specific questions asked and answers given by LOPEZ during the administrative interview. Therefore, it is not known to this Hearing Officer the words used by LOPEZ to answer the questions put to him about the exact way he denied grabbing or pushing AGUILAR around the neck. Again, LOPEZ may have qualified his answers, and without additional testimony or the transcript itself, it is impossible to know.

For these reasons, the Hearing Officer cannot find by a preponderance of the evidence that LOPEZ lied at his administrative hearing about the condition of the door or about whether he grabbed AGUILAR by the neck and pushed her to the ground. Therefore, LOPEZ did not commit the offense of Failure to Truthfully Answer Questions by a preponderance of the evidence, and did not violate Rule 41.

8. Count VIII alleges that LOPEZ violated ISP Department Directive, Rules of Conduct, Paragraph III.A.8 (hereinafter referred to as Rule 8). Rule 8 states, "Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute. Count VIII alleges that LOPEZ violated Rule 8 when, while he was off duty, he was involved in an incident during which he discharged his firearm into the sliding glass door and window of the residence of his ex-girlfriend. LOPEZ was then criminally charged and found guilty of Reckless Conduct.

According to JOHNSON, ISP officers take an oath, and are held to a higher standard than average citizens. In addition, troopers need to be able to carry a gun in order to facilitate essential duties of his or her position. Since an ISP officer often has to act at a moment's notice to protect and preserve, and must be able to lawfully carry a firearm, the Department must be able to rely on its officers to maintain a high level of conduct at all times. In addition, an officer must exhibit a high standard of conduct, since he or she might have to take action while he or she is off duty, if there is an active shooter present, or someone is about to be harmed seriously if there is inaction by the officer.

As stated above, LOPEZ violated ISP policy in many ways on April 6, 2014. LOPEZ violated policy when he, for personal reasons, ran the SUV plate using his MDC and found the owner's name was unfamiliar, LOPEZ got out of his car and approached the house. LOPEZ did not call 911 or alert the CPD. LOPEZ further violated policy when he

walked around to the back of AGUILAR's house, went up on the deck/porch, and gained entry into the house uninvited by shooting six bullets into the glass door and window. LOPEZ violated policy when he entered the bedroom with his gun pointed at AGUILAR and MARKS, and pushed AGUILAR to the ground. Even if one were to accept LOPEZ' version of the facts, there was insufficient basis for believing a crime was occurring that warranted deadly force. A judge granted AGUILAR an Order of Protection against LOPEZ. LOPEZ was also charged with three felonies and a misdemeanor, and found guilty of reckless conduct. LOPEZ' gun was taken away, and he lost his right to carry a gun, whether temporarily or permanently. In taking the actions he took on April 6, 2014, LOPEZ demonstrated that he was unable to perform his job with sufficiently high standards, and brought the Department into disrepute.

For all of these reasons, the Hearing Officer finds that on April 6, 2014, LOPEZ did not behave in accordance with the high level of conduct required to be an ISP Officer. He lost the right to use his gun, clearly impairing his ability to perform the job, he has a criminal conviction on his record, and he brought the Department into disrepute. The Hearing Officer finds by a preponderance of the evidence that LOPEZ committed a violation of Count VIII, ISP Directive ROC-002, Rules of Conduct, Paragraph III.A.8.

9. Count IX alleges that LOPEZ violated ISP Department Directive, Rules of Conduct, Paragraph III.A.66 (hereinafter referred to as Rule 66). Rule 66 states that, "Officers will use Mobile Data Computer (MDC) systems in accordance with established Department procedures. Count IX alleges that LOPEZ violated Rule 66 when he, while off duty, used

his MDC to access LEADS and run the registration of a vehicle parked in the residential driveway of AGUILAR, his former girlfriend, for a purpose other than official ISP business. The Count maintains that this use of his MDC was a violation of ISP Directive SRV-208, Mobile Data Computer Systems, Paragraph III.D.1 (hereinafter referred to as SRV-208). SRV-208 states, "Use of the MDC is restricted to official ISP business. Computer files, web browsing history, all messaging, software installed, and LEADS inquiries, are subject to review without notice to the user. There is no expectation of privacy with respect to use of the MDC."

ISP Directive SRB80 regarding the use of an officer's mobile data computer (MDC) system, states in part in paragraph 3D1, that, "The use of the MDC is restricted to official ISP business." LOPEZ was not conducting official ISP business on April 6, 2014. JOHNSON said that using the MDC to obtain LEADS information about a subject or a vehicle outside of official ISP business is unauthorized. Authorized ISP use includes the use of the MDC to secure information sought as a result of a traffic stop or other official ISP sought while on duty. ISP officers are not authorized to use the MDC to run an individual's license plate or seek other information for his or her personal gain. Therefore, when LOPEZ arrived unannounced and pulled into the driveway of his ex-girlfriend that he had not seen in a while, and he saw an unknown vehicle parked in the driveway, this did not give him sufficient basis to take the action he did. She also said that LOPEZ violated policy when he became suspicious and opened the MDC and used it to look up MARKS' car since this was not for official police business. JOHNSON said the Department acknowledges that an ISP officer wields a lot of power, and can get a

great deal of personal and other information about a person with his or her MDC, and so it is important it is used properly, to protect privacy. JOHNSON further stated that officers are trained that the MDC should not be placed in one's personal vehicle, and that if any vehicle is left unattended, the MDC should be removed from that vehicle. While there is no specific ISP policy prohibiting having an MDC in a personal vehicle or using an MDC in a personal vehicle, JOHNSON said it was unusual.

Even if one were to believe the explanation given by LOPEZ for his conduct, LOPEZ' actions on the morning of April 6, 2014, showed that he did not possess clear and good decision-making. LOPEZ would be a liability to the organization if he were put back out in his previous duties as an officer with the State Police, and having the ability to effectuate arrests, stop people, engage in other arrest operations."

The Hearing Officer finds that LOPEZ was not conducting official ISP business on April 6, 2014, when he used his MDC to obtain LEADS information and run the registration for MARKS' vehicle simply because it was parked in AGUILAR's driveway on a Sunday morning. Nor was LOPEZ really worried that the SUV was blocking AGUILAR's car, which was evidence that a crime was occurring. LOPEZ was suspicious and jealous when he saw the SUV parked in the driveway, and used the MDC to run the plates for his own personal knowledge. LOPEZ said he took his MDC with him that morning because he needed to do work and finish his DUI reports. He also said that he brought the MDC to AGUILAR's house because he wanted to read the reports out loud to AGUILAR, so she could give her opinion if something did not sound right. However, the Hearing Officer finds that LOPEZ did not take his MDC to

AGUILAR's house at 7:00 a.m. for that purpose, especially considering they had broken up and he was showing up at her house uninvited. Nor did LOPEZ use his MDC for that purpose.

For these reasons, and for all of the reasons stated above in the discussion of Count I, the Hearing Officer finds that LOPEZ was not conducting ISP official business when he used his MDC to run the license plates of MARKS' SUV which was parked in AGUILAR's driveway, directly behind her car. The Hearing Officer finds by a preponderance of the evidence that LOPEZ committed a violation of Count IX, Department Directive ROC-002, Rules of Conduct, Paragraph III.A.66.

10. Count X alleges that LOPEZ violated ISP Department Directive ROC-002, Rules of Conduct, Paragraph III.A.7 (hereinafter referred to as Rule 7). Rule 7 states, "Officers will conduct themselves on and off duty in such a manner as to reflect favorably on the Department. Officers will not engage in conduct that discredits the integrity of the Department or its employees, or that impairs the operations of the Department. Such actions will constitute conduct unbecoming an officer. Count X alleges that LOPEZ violated Rule 7 when he was involved in an incident during which he discharged a firearm into the sliding glass door and window of AGUILAR's residence, and was questioned by the Chicago Police Department, and was criminally charged and later found guilty of Reckless Conduct.

JOHNSON said this charge is usually brought when another police department has become involved in the matter brought about by the ISP officer's conduct, so that it is now known outside of ISP, and discredits the Department. In this case, AGUILAR's residence is located in Chicago, and when LOPEZ fired six bullets into AGUILAR's home and entered her house with a gun, it was the CPD who was called, the house was in CPD jurisdiction, and it was CPD who was in charge of carrying out the investigation and took statements of LOPEZ and witnesses. In addition, criminal charges were brought against LOPEZ, which necessitated that several CPD officers be subpoenaed and testify against LOPEZ in at the criminal trial. LOPEZ was found guilty of reckless conduct.

Finally, even though this Hearing Officer did not find that LOPEZ had specifically lied at his administrative hearing, it is clear that LOPEZ was not a credible witness in this hearing. As stated by JOHNSON, ISP officers are subject to testimony as part of their work, and it is incumbent upon them that they be credible as witnesses. When an officer is found to have a credibility issue within ISP, it jeopardizes their credibility in court, and contributes to a lack of integrity within the agency as a whole. Moreover, when officers from outside the ISP determine that LOPEZ has a credibility issue, the entire Department is discredited.

For these reasons, the Hearing Officer finds that on April 6, 2014, LOPEZ' did not conduct himself in a manner that reflected favorably on the Department. LOPEZ' conduct was unbecoming to an ISP officer, and discredited the Department, as well as other ISP officers and violated Department Directive ROC-002. The Hearing Officer

finds by a preponderance of the evidence that LOPEZ committed a violation of Count X, ISP Directive ROC-002, Rules of Conduct, Paragraph III.A.7.

CONCLUSIONS OF LAW

1. The Illinois State Police Merit Board has jurisdiction over the parties hereto and the subject matter of this case.
2. This matter is decided exclusively based on the evidence admitted at the hearing.
3. The Illinois State Police has the burden of proving these allegations by a preponderance of the evidence, as set forth in the Illinois Administrative Code, 80 Ill. Adm. Code Ch. IV secs. 150.665(f) and 150.680(a).
4. With reference to Count I of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Aggravated Discharge of a Firearm, 720 ILCS 5/24-1.2(a)(1), in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.
5. With reference to Count II of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Reckless Discharge of a Firearm, 720 ILCS 5/24-1.5(a), in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.
6. With reference to Count III of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Home

Invasion/Firearm, 720 ILCS 5/19-6(a)(3), in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.

7. With reference to Count IV of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Home Invasion/Discharge Firearm, 720 ILCS 5/19-6(a)(4), in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.
8. With reference to Count V of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Reckless Conduct, 720 ILCS 5/12-5, in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.1.
9. With reference to Count VI of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Judicial Finding of Guilt for Reckless Conduct, in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.2.
10. With reference to Count VII of the Amended Complaint, the Hearing Officer concludes that the Department has not proven by a preponderance of the evidence that LOPEZ committed the offense of Failure to Truthfully Answer Questions.
11. With reference to Count VIII of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Bringing the Department into Disrepute, in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.8.
12. With reference to Count IX of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the offense of Misuse

of Mobile Data Computer, in violation of Department Directive ROC-002, Rules of Conduct, Paragraph 111.A.66.

13. With reference to Count X of the Amended Complaint, the Hearing Officer finds by a preponderance of the evidence that LOPEZ committed the Offense of Conduct Unbecoming an Officer, in violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.7.

PENALTY CONSIDERATION

The Department is seeking termination of Trooper Lopez' employment with the Illinois State Police. The Hearing Officer understands that it is the Illinois State Police Merit Board that has the exclusive authority to decide the appropriate penalty for any findings of violation made in this case. However, in an effort to facilitate the Board's consideration of the evidence with reference to any penalty to be imposed, the Hearing Officer directs the Board's attention to the following evidence with reference to the charges and the penalties, although this is not intended to be all inclusive.

The Hearing Officer has found violations of Count I, II, III, and IV of the Amended Complaint. All of these Violations are First Offense-Level 7 Misconduct: Up to Termination.

The Hearing Officer has found a violation of Count V, which is a First Offense-Level 4 Misconduct: 31-45 Days.

The Hearing Officer has found a violation of Count VI, which is a First Offense-Level 6 Misconduct: 90-180 Days.

The Hearing Officer has found a violation of Count VIII, which is a First Offense-Level 2 Misconduct: 4-10 Days.

The Hearing Officer has found a violation of Count IX, which is a First Offense-Level 2 Misconduct: 4-10 Days.

The Hearing Officer has found a violation of Count X, which is a First Offense-Level 1 Misconduct: Reprimand-3 Days.

The Hearing Officer strongly believes that even if one were to believe the explanation given by LOPEZ for his conduct and actions on the morning of April 6, 2014, LOPEZ showed that he did not possess clear and good decision-making ability. The Hearing Officer also believes that LOPEZ showed he is unable to control his thoughts and emotions and unable to control his temper. LOPEZ would be a liability to the Department if he were put back out on the street doing his previous duties as an officer with the Illinois State Police. He could not be relied upon to exhibit the high standard of conduct that is necessary to properly judge and handle stressful situations, to effectuate arrests, and to deescalate activity when it is needed. Moreover, he would be likely to abuse the power that comes with being an Illinois State Police Officer.



Susan Davis Brunner, Hearing Officer
Illinois State Police Merit Board

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**STATE OF ILLINOIS
ILLINOIS STATE POLICE MERIT BOARD**

RECEIVED

ILLINOIS STATE POLICE
MERIT BOARD

IN THE MATTER OF:

TROOPER JUAN LOPEZ
I.D. No. 6194



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Illinois State Police
Merit Board No.

16-5

COMPLAINT

NOW COMES Leo P. Schmitz, Director of the Illinois State Police, and pursuant to 20 ILCS 2610/14 and 80 Ill. Admin. Code § 150.575 states as follows:

1. Juan Lopez ("Respondent") is employed as a State Police Officer by the Illinois State Police ("ISP" or "Department") and holds the rank of Trooper. At all times relevant to this Complaint, Respondent was assigned to District Chicago. Respondent has been employed by the Department since June 7, 2009.
2. On the morning of April 6, 2014, while off-duty and dressed in civilian clothes, Respondent drove his personal vehicle to the home of ISP Special Agent Angelica Aguilar in Chicago, Illinois.
3. Respondent had ended his long-term romantic relationship with Special Agent Aguilar approximately one week before.
4. Respondent did not call Special Aguilar on the morning of April 6, 2014, prior to arriving at her house.
5. Respondent observed an SUV parked in Special Agent Aguilar's driveway that he did not recognize.

6. At approximately 8:41 a.m., Respondent used his Department-issued Mobile Data Computer ("MDC") to conduct a Law Enforcement Agencies Data System ("LEADS") inquiry on the SUV's registration.
7. Respondent exited his vehicle and walked to the side entrance to Special Agent Aguilar's home.
8. The side entrance had a solid door and an exterior storm door. There was no visible damage to the exterior of the side entrance.
9. Respondent did not knock on the door. Rather, Respondent attempted to open the door, but it was locked.
10. Respondent then walked to the back of the house near a sliding glass door.
11. Respondent looked through the sliding glass door and observed a man standing in Special Agent Aguilar's bedroom.
12. The man in the bedroom was ISP Special Agent Lee Marks.
13. Respondent heard or saw that Special Agent Aguilar was also inside the house.
14. Respondent knew that Special Agent Aguilar lived in the home with her two minor children.
15. Special Agent Aguilar quickly closed the bedroom door from the inside.
16. Respondent tried to open the sliding door to attempt to enter the house, but he was unable to make entry.
17. Respondent discharged his personal firearm, a Walther PPS semi-automatic handgun, into the sliding glass door to attempt to make entry into the house.
18. The gunfire did not shatter the glass in the sliding door.

19. Respondent then discharged his firearm into the back, south window in an attempt to make entry into the house.
20. Respondent fired a total of six shots into Special Agent Aguilar's home, damaging a chair, dining room table, and fixtures inside.
21. Respondent entered the house through the back window he shattered.
22. Respondent opened Special Agent Aguilar's bedroom door, with his firearm drawn.
23. Respondent placed his open hand around Special Agent Aguilar's neck and pushed her to the ground. Special Agent Aguilar sustained bruising and other marks on her skin as a result.
24. At some point, Special Agent Aguilar or Special Agent Marks announced that Special Agent Marks was a police officer.
25. Respondent holstered his firearm and exited the residence, followed by Special Agent Marks.
26. Respondent asked Special Agent Marks whether he had slept with Special Agent Aguilar.
27. Respondent eventually secured his firearm in his trunk.
28. At approximately 8:49 a.m., 911 had received a call reporting a man climbing into the back window of Special Agent Aguilar's home.
29. Respondent did not call 911 at any time on April 6, 2014.
30. Shortly after Respondent secured his firearm, Chicago Police Department ("CPD") officers arrived in response to the 911 call.
31. After CPD arrived, Respondent repeatedly attempted to call Special Agent Aguilar using his cellular phone. He also sent her a text message.

32. Respondent was taken into custody by CPD.

33. After being released from custody later in the day, Respondent again attempted to call Special Agent Aguilar using his cellular phone at 1:08 a.m. the next morning.

34. On April 9, 2014, Special Agent Aguilar and her minor children were granted a twenty-one day Emergency Order of Protection against Respondent. The Emergency Order of Protection was extended numerous times up to February 5, 2015.

35. On February 5, 2015, a hearing was held at the Cook County domestic violence court. At the conclusion of the hearing, a Plenary Order of Protection was issued for a period of one year. The Court also ordered Respondent to pay \$1,584.03 for the damage he caused to Special Agent Aguilar's home. The Plenary Order of Protection has been extended several times and is currently in effect as of the date of this Complaint.

36. On July 2, 2015, Respondent was again arrested in connection with the events of April 6, 2014, this time for two counts of felony home invasion and one count of felony aggravated discharge of a firearm.

37. At a court hearing later that day, Respondent's bail was set at \$150,000. He was given a D-bond and bonded out.

38. On June 22, 2016, Respondent's criminal trial was held pursuant to a multi-count indictment. The most serious felony charged, home invasion involving the discharge of a firearm, a Class X felony, is punishable by a minimum of 26 years in the penitentiary. The other felonies charged were home invasion involving firearm, a Class X felony, aggravated discharge of a firearm, a Class 1 felony, and reckless discharge of a firearm, a Class 4 felony. Respondent was also charged with reckless conduct, a Class A misdemeanor.

39. Respondent waived his right to a jury trial and elected to proceed with a bench trial.

40. At trial, CPD Forensic Investigator Nancy DeCook testified that she did not observe any damage to the exterior of the side door to Special Agent Aguilar's home.

41. Respondent was found guilty of misdemeanor reckless conduct. The judge found Respondent not guilty of the remaining crimes charged.

42. Respondent was sentenced to fifteen months of supervision, during which he is prohibited from having any contact with Special Agent Aguilar and Special Agent Marks.

43. On August 31, 2016, Respondent was administratively interviewed by DII Special Agent Sherise Gipson and Master Sergeant Jose DeJesus.

44. Respondent was advised of his statutory administrative proceeding rights by Special Agent Gipson.

45. Respondent was asked, "During our investigation, it was discovered that you had grabbed Special Agent AGUILAR by her neck and pushed her. Is this true?[,]" to which Respondent responded, "No."

46. During the administrative interview, Respondent stated "I never pushed anyone[.]"

47. Respondent was asked to describe the damage he observed to the side door before he entered the house on April 6, 2014. Respondent stated, "There was just evidence that clearly shown [*stet.*] that someone kicked the door. Someone broke into it."

48. Respondent stated, "The solid door was broken from the, from the hinge where it locks, that area."

49. Respondent further stated "I noticed that the, the door, the solid door inside was broken, like someone had kicked it in....Door was kicked in. Looked like it had been kicked in."

50. Respondent stated, "The solid door was, was broken in."

COUNT I

VIOLATION OF STATE LAW – AGGRAVATED DISCHARGE OF A FIREARM

51. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

52. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1., which states:

Officers will uphold the Constitutions of the United States and the state of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.

(First Offense – Level 7 Misconduct: Up to Termination)

53. Respondent violated this rule in that on April 6, 2014, while off duty, he failed to obey state law when he committed the offense of Aggravated Discharge of a Firearm, in violation of 720 ILCS 5/24-1.2(a)(1), a Class 1 Felony, in that he knowingly discharged his firearm into the sliding glass door and south window of Special Agent Aguilar's residence, which he knew to be occupied, from a place outside that building.

COUNT II

VIOLATION OF STATE LAW – RECKLESS DISCHARGE OF A FIREARM

54. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

55. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1., which states:

Officers will uphold the Constitutions of the United States and the state of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.

(First Offense – Level 7 Misconduct: Up to Termination)

56. Respondent violated this rule in that on April 6, 2016, while off duty and not performing his official duties, he failed to obey state law when he committed the offense of Reckless Discharge of a Firearm, in violation of 720 ILCS 5/24-1.5(a), a Class 4 Felony, in that he discharged his firearm in a reckless manner into the sliding glass door and south window of Special Agent Aguilar's residence, which endangered the bodily safety of an individual.

COUNT III

VIOLATION OF STATE LAW – HOME INVASION/FIREARM

57. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

58. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1., which states:

Officers will uphold the Constitutions of the United States and the state of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.

(First Offense – Level 7 Misconduct: Up to Termination)

59. Respondent violated this rule in that on April 6, 2014, while off duty and not acting in the line of duty, he failed to obey state law when he committed the offense of Home Invasion/Firearm, in violation of 720 ILCS 5/19-6(a)(3), a Class X Felony, in that he, without

authority, knowingly entered Special Agent Aguilar's dwelling place, when he knew one or more persons was present, and while armed with a firearm, used force or threatened the imminent use of force upon a person within the dwelling place.

COUNT IV

VIOLATION OF STATE LAW – HOME INVASION/DISCHARGE FIREARM

60. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

61. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1., which states:

Officers will uphold the Constitutions of the United States and the state of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.

(First Offense – Level 7 Misconduct: Up to Termination)

62. Respondent violated this rule in that on April 6, 2014, while off duty and not acting in the line of duty, he failed to obey state law when he committed the offense of Home Invasion/Discharge Firearm, in violation of 720 ILCS 5/19-6(a)(4), a Class X Felony, in that he, without authority, knowingly entered Special Agent Aguilar's dwelling place, when he knew one or more persons was present, and used force or threatened the imminent use of force upon a person within the dwelling place, and personally discharged a firearm.

COUNT V

VIOLATION OF STATE LAW – RECKLESS CONDUCT

63. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

64. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1., which states:

Officers will uphold the Constitutions of the United States and the state of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.

(First Offense – Level 4 Misconduct: 31 – 45 Days)

65. Respondent violated this rule in that on April 6, 2014, while off duty, he failed to obey state law when he committed the offense of Reckless Conduct, in violation of 720 ILCS 5/12-5, a Class A misdemeanor, in that he recklessly discharged his firearm into the sliding glass door and window of Special Agent Aguilar's residence, endangering the safety of another person.

COUNT VI

JUDICIAL FINDING OF GUILT FOR RECKLESS CONDUCT

66. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

67. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.2., which states:

If an officer enters a plea of guilty, nolo contendere, stipulates to the facts or is found guilty of a violation of any law, or if there is any other judicial determination

that will support any punitive measure taken against the officer, such action by the officer or judicial entity will be prima facie evidence of a violation of this directive.

(First Offense – Level 6 Misconduct; 90 – 180 Days)

68. Respondent violated this rule in that on June 22, 2016, he was found guilty of Reckless Conduct.

COUNT VII

FAILURE TO TRUTHFULLY ANSWER QUESTIONS

69. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

70. All or a portion of the facts set forth herein constitute Respondent's violation of Departmental Directive ROC-002, Rules of Conduct, Paragraph III.A.41.c, which states:

Officers are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer is the subject of the investigation and has been advised of his/her statutory administrative proceedings rights if the allegation indicates that a recommendation for demotion, suspension of more than 15 days or discharge from the Department is probable.

(First Offense – Level 7 Misconduct: Up to Termination)

71. Respondent violated this rule in that on August 31, 2016, he failed to truthfully answer questions during a Department personnel investigation for which he was the subject and had been advised of his statutory administrative rights, when he falsely described the condition of the side door to Special Aguilar's home prior to his April 6, 2014, entry into the home.

72. Respondent also violated this rule in that on August 31, 2016, he failed to truthfully answer questions during a Department personnel investigation for which he was the subject and had been advised of his statutory administrative rights, when he falsely denied grabbing Special Agent Aguilar by the neck and pushing her to the ground on April 6, 2014.

COUNT VIII

BRINGING THE DEPARTMENT INTO DISREPUTE

73. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

74. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.8., which states:

Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.

(First Offense – Level 2 Misconduct: 4-10 days)

75. Respondent violated this rule when, on April 6, 2014, he failed to maintain a level of conduct in his personal affairs that is in keeping with the highest standards of law enforcement and caused the Department to be brought into disrepute when, while off duty, he was involved in an incident during which he discharged his firearm into the sliding glass door and window of the residence of his ex-girlfriend, Special Agent Aguilar. Subsequently, Respondent was questioned by the Chicago Police Department. Respondent was criminally charged and later found guilty of Reckless Conduct.

COUNT IX

MISUSE OF MOBILE DATA COMPUTER

76. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

77. ISP Directive SRV-208, Mobile Data Computer Systems, at Paragraph III.D.1., states:

Use of the MDC is restricted to official ISP business. Computer files, web browsing history, all messaging, software installed, and LEADS inquiries, are subject to review without notice to the user. There is no expectation of privacy with respect to use of the MDC.

78. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.66., which states:

Officers will use Mobile Data Computer (MDC) systems in accordance with established Department procedures.

(First Offense – Level 2 Misconduct; 4 -10 Days)

79. Respondent violated this rule when, on April 6, 2016, he failed to use his Mobile Data Computer (MDC) in accordance with established Department procedure SRV-208.III.D.1 when, while off duty, he used his MDC to access LEADS and run the registration of a vehicle parked in the residential driveway of Special Agent Aguilar, his former girlfriend, for a purpose other than official ISP business.

COUNT X

CONDUCT UNBECOMING AN OFFICER

80. All preceding paragraphs of this Complaint are incorporated as if restated fully herein.

81. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.7., which states:

Officers will conduct themselves on and off duty in such a manner as to reflect favorably on the Department. Officers will not engage in conduct that discredits the integrity of the Department or its employees, or that impairs the operations of the Department. Such actions will constitute conduct unbecoming an officer.

(First Offense – Level 1 Misconduct; Reprimand to 3 days)

82. Respondent violated this rule when, on April 6, 2016, he failed to conduct himself off duty in such a manner as to reflect favorably on the Department, and his conduct discredited the integrity of the Department when, while off duty, he was involved in an incident during which he discharged a firearm into the sliding glass door and window of the residence of his ex-girlfriend Special Agent Aguilar. Subsequently, Respondent was questioned by the Chicago Police Department. Respondent was criminally charged and later found guilty of Reckless Conduct for his actions.

CERTIFICATION

Copies of Illinois State Police Department Directive ROC-002, Rules of Conduct, and SRV-208, Mobile Data Computer Systems, are attached and are certified by the Director as accurate, complete, and in full force and effect at the time the aforementioned acts were committed.

CONCLUSION

WHEREFORE, by reason of these facts and charges, I request the Illinois State Police Merit Board conduct a hearing in this matter and terminate Respondent from employment with the Illinois State Police.

Respectfully submitted,


Leo P. Schmitz, Director

Illinois State Police
801 South Seventh Street, Suite 1100-S
Springfield, Illinois 62703